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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1924

No. 556/146

ARMIN A. SCHLESINGER, HENRY J. SCHLESINGER, AND MYRON T. MacLAREN, EXECUTORS, ETC., ET AL., PLAINTIFFS IN ERROR,

vs.

THE STATE OF WISCONSIN AND COUNTY OF MILWAUKEE

IN ERROR TO THE SUPREME COURT OF THE STATE OF WISCONSIN

FILED JULY 28, 1924

(30,521)

(30,521)

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JANUARY 16, 1925

[fol. 1] **IN SUPREME COURT OF WISCONSIN**

WRIT OF ERROR—Filed June 23, 1924

UNITED STATES OF AMERICA, ss:

The President of the United States to the Honorable the Judges of the Supreme Court of the State of Wisconsin, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in said Supreme Court of the State of Wisconsin, before you or some of you, being the highest court of law or equity of said State in which a decision could be had in said suit; in the Matter of the Estate of Ferdinand Schlesinger, deceased, between Armin A. Schlesinger, Henry J. Schlesinger and Myron T. MacLaren, Executors of the Last Will and Testament of Ferdinand Schlesinger, deceased; Mathilde Schlesinger; Armin A. Schlesinger; Henry J. Schlesinger; and Gertrude MacLaren, appellants, and the State of Wisconsin and County of Milwaukee, respondents; wherein was drawn in question the validity of a statute of, or an authority exercised under, said State on the ground of their being repugnant to the Constitution and laws of the United States, and the decision was in favor of their validity; a manifest error has happened to the great damage of the said Armin A. Schlesinger, Henry J. Schlesinger and Myron T. MacLaren, Executors of the Last Will and Testament of Ferdinand Schlesinger, deceased; Mathilde Schlesinger; Armin A. [fol. 2] Schlesinger; Henry J. Schlesinger; and Gertrude MacLaren, as by their complaint appears;

We being willing that error, if any has been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf do command you if judgment be therein given, that then, under your seal distinctly and openly, you send the record and proceedings aforesaid with all things concerning the same, to the Supreme Court of the United States, together with this writ so that you have the same at Washington on the 23rd day of July next in the said Supreme Court of the United States to be then and there held, that the record and proceedings aforesaid being inspected the said Supreme Court of the United States may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable William H. Taft, Chief Justice of the Supreme Court of the United States, this 23rd day of June in the Year of Our Lord One Thousand Nine Hundred and Twenty-four.

Wm. H. Comerford, Clerk of the District Court of the United States in and for the Western District of Wisconsin, by Fred W. French, Chief Deputy. (Seal U. S. District Court, Western Dist. of Wisconsin, Madison.)

The above writ is allowed by: A. J. Vinje, Chief Justice of the Supreme Court of the State of Wisconsin. (Seal Supreme Court of Wisconsin.)

[fols. 3-9] The return to the within writ appears by the schedule hereto annexed, the return of the Justices of the Supreme Court of the State of Wisconsin.

Arthur B. McLeod, Clerk. (Seal Supreme Court of Wisconsin.)

[File endorsement omitted.]

[fol. 10] IN SUPREME COURT OF WISCONSIN

No. 81

In the Matter of the Estate of FERDINAND SCHLESINGER, Deceased

ARMIN A. SCHLESINGER, HENRY J. SCHLESINGER, and MYRON T. MacLAREN, Executors of the Last Will and Testament of Ferdinand Schlesinger, Deceased; Mathilde Schlesinger; Armin A. Schlesinger, Henry J. Schlesinger, and Gertrude MacLaren, Appellants,

vs.

STATE OF WISCONSIN and COUNTY OF MILWAUKEE, Respondents.

ASSIGNMENT OF ERRORS—Filed June 23, 1924

Now come the appellants above named by Fawsett, Smart & Shea, their attorneys, and make and file this their assignment of errors and say that in the record and proceedings in the above entitled cause and also in the giving of the judgment heretofore rendered in said cause by said Supreme Court of Wisconsin, there is manifest error in the respects hereinafter set forth, to-wit:

[fol. 11] 1. That the said Supreme Court of Wisconsin erred in affirming by its judgment the final order and judgment of the County Court of Milwaukee County, from which these appellants had taken an appeal to the Supreme Court of Wisconsin, which adjudged that the gifts made by the above named Ferdinand Schlesinger, deceased, to certain of these appellants, being the wife and children of said decedent, within six years prior to his death, but which were not as a matter of fact made in contemplation of the death of the donor, were to be construed as having been made in contemplation of death and were subject to the taxes imposed upon transfers of property made in contemplation of death under the statutes of Wisconsin and particularly that portion of Section 72.01 of said statutes which reads as follows:

Section 72.01. A tax shall be and is hereby imposed upon any transfer of property, real, personal or mixed * * * to any person, association or corporation * * * in the following cases * * *

(3) When the transfer is of property made by a resident, or by a non-resident when such non-resident's property is within this State

or within its jurisdiction, by deed, grant, bargain, sale or gift, made in contemplation of the death of the grantor, vendor or donor, or intended to take effect in possession or enjoyment at or after such death. Every transfer by deed, grant, bargain sale or gift made within six years prior to the death of the grantor, vendor or donor, of a material part of his estate, or in the nature of a final disposition or distribution thereof, without an adequate valuable consideration, shall be construed to have been made in contemplation of death within the meaning of this section:

[fol. 12] and in adjudging, contrary to the contention of these appellants, that said provisions of the statutes, as applied to the gifts so made to the decedent's wife and children as aforesaid, but not made in contemplation of the death of the donor, nor intended to take effect in possession or enjoyment at or after his death, are valid and not in conflict with or in violation of Section (1) of the Fourteenth Amendment to the Constitution of the United States and particularly that portion of Section (1) of said Amendment which reads as follows:

Nor shall any state deprive any person of life, liberty or property without due process of law;

or that portion of Section (1) of said Fourteenth Amendment which reads as follows:

Nor (shall any State) deny to any person within its jurisdiction the equal protection of the laws.

2. That said Supreme Court of Wisconsin erred in refusing to adjudge, as requested by said appellants, that the gifts which were made by the decedent to his wife and children within six years next prior to his death and which were not, as a matter of fact, made in contemplation of the death of the donor, nor intended to take effect in possession or enjoyment at or after his death, were not subject to the inheritance tax imposed by the said statutes of Wisconsin, and that the provisions of Section 72.01, Clause (3) of the Wisconsin Statutes, which prescribe that such gifts shall be subject to the tax [fol. 13] thereby imposed upon transfers made in contemplation of death and shall be construed to have been made in contemplation of death within the meaning of said section, although not in fact made in contemplation of the death of the donor, nor intended to take effect in possession or enjoyment at or after his death, are invalid, unconstitutional and void, as being in conflict with and in violation of Section (1) of the Fourteenth Amendment to the Constitution of the United States and particularly of that portion of Section (1) of said Amendment which reads as follows:

"Nor shall any state deprive any person of life, liberty or property without due process of law;"

and that portion of Section (1) of said Amendment which reads as follows:

"Nor (shall any state) deny to any person within its jurisdiction the equal protection of the laws;"

3. That the said judgment of the Supreme Court of Wisconsin, affirming the said judgment of the County Court of Milwaukee County, is repugnant to and in conflict with the provisions of Section (1) of the Fourteenth Amendment to the Constitution of the United States, and particularly those portions of Section (1) of said Amendment which read as follows:

Nor shall any state deprive any person of life, liberty, or property without due process of law; nor deny to any person the equal protection of the laws.

[fol. 14] And these appellants pray that the judgment aforesaid, for the erors aforesaid and other errors in the record and proceedings aforesaid, may be reversed, annulled and altogether held for nothing and that they may be restored to all things which they have lost by occasion of the said judgment.

Fawsett, Smart & Shea, Attorneys for the Appellants.
Charles F. Fawsett, Edward M. Smart, Charles E. Monroe, of Counsel.

[fols. 15-31] [File endorsement omitted.]

[fol. 32] STATE OF WISCONSIN:

IN COUNTY COURT OF MILWAUKEE COUNTY IN PROBATE

In the Matter of the Estate of FERDINAND SCHLESINGER, Deceased

NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR—Filed Dec. 29, 1923

To Honorable John C. Karel, Judge of said County Court; Honorable John Harrington, Inheritance Tax Counsel for the Wisconsin Tax Commission, and Honorable Neele B. Neelen, Public Administrator of Milwaukee County:

Please take notice that Armin A. Schlesinger, Henry J. Schlesinger and Myron T. MacLaren, as sole acting executors of the last will and testament of said Ferdinand Schlesinger, deceased, hereby appeal to the Supreme Court of the State of Wisconsin from those portions of the order, finding and determination made and entered by said County Court of Milwaukee County in the above entitled proceeding on the 11th day of September, A. D. 1923, which find and determine that certain gifts which had been made by said decedent to his wife and children during the lifetime of said decedent and within six years next prior to his death, were subject to inheritance under the laws of the State of Wisconsin and determine the amount of such taxes.

[fol. 33] And the appellants as the grounds of their appeal and as their assignment of errors upon said appeal hereby assign as error:

1. That said County erred in refusing to find as a conclusion of law as requested by these appellants that the gifts referred to in the third of the Court's findings of fact, made and filed in said proceeding on the 24th day of March, 1923, which were made by the decedent to his wife and children within the six years next prior to his death, are not subject to the inheritance tax and that the provisions of Section 72.01, Clause (3) of the Statutes of Wisconsin, prescribing that such gifts shall be construed to have been made in contemplation of death within the meaning of said section, although not in fact made in contemplation of death, are invalid, unconstitutional and void as being in conflict with and in violation of Article I, Section 1 and Article VIII, Section 1 of the Constitution of Wisconsin and as being in conflict with and in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States, and particularly of that portion of Section 1 of said Fourteenth Amendment which reads as follows: "Nor shall any state deprive any person of life, liberty or property without due process of law", and of that portion of Section 1 of said Fourteenth Amendment which reads as follows: "Nor (shall any state) deny to any person within its jurisdiction the equal protection of the laws".

[fol. 34] 2. That the Court erred in finding as a part of the third of the findings of fact made and filed by the Court on the 24th day of March, 1913, in the above entitled matter that—notwithstanding that none of the gifts made by the decedent within six years next prior to his death were in fact made in view or in anticipation, expectation or apprehension of death or in the actual contemplation of death as said term "contemplation of death" was used in the statute and had been defined and interpreted by the Supreme Court of the State of Wisconsin piror to the enactment of Chapter 643 of the Laws of 1913 and nothwithstanding that none of said gifts were intended to take effect in possession or enjoyment at or after the death of the decedent:—all of the gifts so made by the decedent within the six years next prior to his death must be construed to have been made in contemplation of death within the terms and provisions of Section 72.01, Clause (3) of the Wisconsin Statutes; for the reason that the provisions of said Section 72.01, Clause (3) of the Wisconsin Statutes, prescribing that such gifts shall be construed to have been made in contemplation of death within the meaning of said Section, although not in fact made in contemplation of death, are invalid, unconstitutional and void as being in conflict with and in violation of Article I, Section 1 and Article VIII, Section 1 of the Constitution of Wisconsin and as being in conflict with and in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States and particularly of that portion of Section 1 of said Fourteenth Amendment which reads as follows: "Nor shall any state de-[fol. 35] prive any person of life, liberty or property without due process of law," and of that portion of Section 1 of said Fourteenth Amendment which reads as follows: "Nor (shall any state) deny

to any person within its jurisdiction the equal protection of the laws."

3. That the Court erred in finding as a part of the second conclusion of law contained in its findings of March 24th, 1923, that the gifts referred to in the third of its findings of fact, made by the decedent to his wife and children within the six years next prior to his death are, by the express terms of Section 72.01, Clause (3) of the Wisconsin Statutes, subject to inheritance taxes, although not in fact made in contemplation of death, for the reason that the provisions of said Section 72.01, Clause (3) of the Wisconsin Statutes, prescribing that such gifts shall be construed to have been made in contemplation of death within the meaning of said section, although not in fact made in contemplation of death, are invalid, unconstitutional and void for the reasons set forth in the next preceeding assignment of error.

4. That the Court erred in finding as a part of its said second conclusion of law as follows: "Which section of the Statutes" (referring to Section 72.01, Clause (3) of the Wisconsin Statutes) "I hold to be constitutional and valid;" for the reason that the provisions of Clause (3) of said Section 72.01 of the Statutes, prescribing that gifts made within six years next prior to the death of [fol. 36] the doner shall be construed to have been made in contemplation of death within the meaning of said section, although not in fact made in contemplation of death, are invalid, unconstitutional and void for the reasons set forth in the second of these assignments of error.

5. That the Court erred in finding and directing in its fourth conclusion of law that the finding and determination of the inheritance taxes in said estate are to be made in accordance with the foregoing findings of fact and conclusions of law, including the findings of fact and conclusions of law to which error is hereby assigned in the foregoing assignments of error, for the reasons set forth in the second of these assignments of error.

6. That the Court erred in that portion of its order, finding and determination made and filed in said proceeding on the 11th day of September, 1923, which finds and determines that the gifts made by the decedent within six years next prior to his death are subject to the inheritance tax under the provisions of Section 72.01, Clause (3) of the Wisconsin Statutes, and which determines the amount of such taxes for the reason that the provisions of said Clause (3) of said Section 72.01 of said Statutes, prescribing that such gifts shall be construed to have been made in contemplation of death within the meaning of said section, although not in fact made in contemplation of death, are invalid, unconstitutional and void as being conflict with and in violation of Article I, Section 1 and Article VIII, Section 1 of the Constitution of Wisconsin, and as being in [fols. 37-43] conflict with and in violation of Section 1, of the Fourteenth Amendment to the Constitution of the United States and particularly of that portion of Section 1 of said Fourteenth Amendment

which reads as follows: "Nor shall any state deprive any person of life, liberty or property without due process of law," and of that portion of Section 1 of said Fourteenth Amendment which reads as follows: "Nor (shall any state) deny to any person within its jurisdiction the equal protection of the laws."

Dated this 9th day of November, 1923.

Fawsett and Smart, Attorneys for the Appellants.

[fol. 44] In County Court of Milwaukee County

[Title omitted]

Notice of Appeal and Assignment of Error—Filed Dec. 29, 1923

To Honorable John C. Karel, Judge of said County Court; Honorable John Harrington, Inheritance Tax Counsel for the Wisconsin Tax Commission; and Honorable Neele B. Neelen, Public Administrator of Milwaukee County:

Please take notice That Mathilde Schesinger, the widow of the said Ferdinand Schlesinger, deceased, hereby appeals to the Supreme Court of the State of Wisconsin from that portion of the order, finding and determination made and entered by said County Court of Milwaukee County in the above entitled proceeding on the 11th day of September, A. D. 1923, finding and determining the inheritance taxes to be paid upon the respective shares or transfers of shares or interests of the various legatees, devisees and donees mentioned in said order, finding and determination, which finds and determines that certain gifts which had been made by said decedent to this appellant during the lifetime of said decedent and within six years prior to his death, were subject to inheritance taxes under the laws of the State of Wisconsin and determines the amounts of such taxes. [fol. 45] And the appellant, as the grounds of her appeal and as her assignment of errors upon said appeal hereby assigns as error:

1. That said County Court erred in refusing to find as a conclusion of law as requested by the executors of the Will of said Ferdinand Schlesinger, deceased, that the gifts referred to in the third of the court's findings of fact, made and filed in said proceeding on the 24th day of March, 1923, which were made by the decedent to this appellant, as the wife of said decedent, within the six years next prior to his death, are not subject to the inheritance tax and that the provisions of Section 72.01, Clause (3) of the Statutes of Wisconsin, prescribing that such gifts shall be construed to have been made in contemplation of death within the meaning of said section, although not in fact made in contemplation of death, are invalid, unconstitutional and void as being in conflict with and in violation of Article I, Section 1 and Article VIII, Section 1 of the Constitution of Wisconsin and as being in conflict with and in violation of Section 1

of the Fourteenth Amendment to the Constitution of the United States, and particularly of that portion of Section 1 of said Fourteenth Amendment which reads as follows: "Nor shall any state deprive any person of life, liberty or property without due process of law," and of that portion of Section 1 of said Fourteenth Amendment which reads as follows: "Nor (shall any state) deny to any person within its jurisdiction the equal protection of the law."

[fol. 46] 2. That the Court erred in finding as a part of the third of the findings of fact, made and filed by the Court on the 24th day of March, 1923, in the above entitled matter, that—notwithstanding that none of the gifts made by the decedent within six years next prior to his death were in fact made in view, or in anticipation, expectation or apprehension of death, or in the actual contemplation of death as said term "contemplation of death" was used in the statute and had been defined and interpreted by the Supreme Court of the State of Wisconsin prior to the enactment of Chapter 643 of the Laws of 1913; and notwithstanding that none of said gifts were intended to take effect in possession or enjoyment at or after the death of the decedent:—all of the gifts so made by the decedent within the six years next prior to his death and particularly the gifts so made to this appellant within said period, must be construed to have made in contemplation of death within the terms and provisions of Section 72.01, Clause (3) of the Wisconsin Statutes; for the reason that the provisions of said Section 72.01, Clause (3) of the Wisconsin Statutes, prescribing that such gifts shall be construed to have been made in contemplation of death within the meaning of said Section, although not in fact made in contemplation of death, are invalid, unconstitutional and void as being in conflict with and in violation of Article I, Section 1 and Article VIII, Section 1 of the Constitution of Wisconsin and as being in conflict with and in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States and particularly of that portion of Section 1 of said Four-
[fol. 47] teenth Amendment which reads as follows: "Nor shall any state deprive any person of life, liberty or property without due process of law," and of that portion of Section 1 of said Fourteenth Amendment which reads as follows: "Nor (shall any state) deny to any person within its jurisdiction the equal protection of the laws."

3. That the Court erred in finding as a part of the second conclusion of law contained in its findings of March 24th, 1923, that the gifts referred to in the third of its findings of facts, made by the decedent to this appellant as his wife within the six years next prior to his death are, by the express terms of Section 72.01, Clause (3) of the Wisconsin Statutes, subject to inheritance taxes, although not in fact made in contemplation of death, for the reason that the provisions of said Section 72.01, Clause (3) of the Wisconsin Statutes, prescribing that such gifts shall be construed to have been made in contemplation of death within the meaning of said section, although not in fact made in contemplation of death, are invalid, unconstitutional and void for the reasons set forth in the next preceding assignment of error.

4. That the Court erred in finding as a part of its said second conclusion of law as follows: "Which section of the Statutes" (referring to Section 72.01 Clause (3) of the Wisconsin Statutes "I hold to be constitutional and valid;" for the reason that the provisions of Clause (3) of said Section 72.01 of the Statutes, prescribing that gifts made [fol. 48] within six years next prior to the death of the donor shall be construed to have been made in contemplation of death within the meaning of said section, although not in fact made in contemplation of death, are invalid, unconstitutional and void for the reasons set forth in the second of these assignments of error.

5. That the court erred in finding and directing in its fourth conclusion of law that the finding and determination of the inheritance taxes in said estate are to be made in accordance with the foregoing findings of fact and conclusions of law, including the findings of fact and conclusions of law to which error is hereby assigned in the foregoing assignments of error, for the reasons set forth in the second of these assignments of error.

6. That the court erred in that portion of its order, finding and determination made and filed in said proceeding on the 11th day of September, 1923, which finds and determines that the gifts made by the decedent within six years next prior to his death and particularly the gifts so made to this appellant, although not in fact made in contemplation of death, are subject to the inheritance tax under the provisions of Section 72.01, Clause (3) of the Wisconsin Statutes, and which determines the amount of such taxes, for the reason that the provisions of said Clause (3) of said Section 72.01 of said Statutes, prescribing that such gifts shall be construed to have been made in contemplation of death within the meaning of said section, although not in fact made in contemplation of death, are invalid, unconstitutional and void as being in conflict with and in violation of Article I, Section 1 and Article VIII, Section 1 of the [fols. 49-100] Constitution of Wisconsin, and as being in conflict with and in violation of Section 1, of the Fourteenth Amendment to the Constitution of the United States and particularly of that portion of Section 1 of said Fourteenth Amendment which reads as follows: "Nor shall any state deprive any person of life, liberty or property without due process of law," and of that portion of Section 1 of said Fourteenth Amendment which reads as follows: "Nor (shall any state) deny to any person within its jurisdiction the equal protection of the laws."

Dated this 9th day of November, 1923.

Fawsett and Smart, Attorneys for the Appellant.

[fol. 101] COUNTY COURT OF MILWAUKEE COUNTY

[Title omitted]

PETITION OF EXECUTORS—Filed in County Court December 8, 1922; in Supreme Court December 29, 1923

The petition of Henry J. Schlesinger, Armin A. Schlesinger and Myron T. MacLaren, Executors of the last will and testament of the above named Ferdinand Schlesinger, deceased, respectfully represents and shows unto the court as follows:

That these petitioners, together with one Edward G. Wilmer, were duly appointed executors of the last will and testament of said decedent on the 7th day of January, 1921, and that letters testamentary were duly issued to them on that day; that these petitioners and said Wilmer thereafter continued to act as such executors until some time in the spring of 1922, since which time said Wilmer, who previously removed from the State of Wisconsin and has since been engaged in business in the city of Akron, in the State of Ohio, has been unable to take any active part in the administration of said estate, and is not now within the State of Wisconsin, and these [fol. 102] petitioners have ever since been and now are the sole acting executors of said estate.

That said decedent left an estate which, with the exception of a lot in Forest Home Cemetery in the city of Milwaukee, consisted entirely of personal property. That an inventory of all of such property which had come to the notice of the executors at the time of the making of the same has been duly filed; that the property therein listed has been appraised by Fred W. Rogers and Wm. E. McCarty, general appraisers, and by Jackson B. Kemper who was appointed by this court as special appraiser under the provisions of Sections 72.13, 72.14, and 72.15 of the Wisconsin Statutes of 1922, and whose report is on file in this court, at the value of $2,062,911.65. That certain other assets in addition to the property set forth in said inventory, have since been discovered by the executors of a value less than $1,000.00.

That in addition to the estate left by the decedent at the time of his death and disposed of by his will, the decedent during his lifetime and within six years prior to his death had transferred, by way of gift, to his wife, Mathilde Schlesinger, and to his sons Henry J. Schlesinger, and Armin A. Schlesinger, and his daughter Gertrude MacLaren, property of considerable value which has been appraised by the special appraiser as shown by his report on file in this court, as follows:

Gifts to Mrs. Schlesinger	$1,115,772.10
Henry J. Schlesinger	1,757,923.13
Armin A. Schlesinger	1,716,258.04
Gertrude MacLaren	1,791,657.15

[fol. 103] And that in addition to the foregoing, said Mathilde Schlesinger has received upon policies of insurance on her husband's

life, payable directly to her by the terms of the policies, the sum of $40,096.23.

These petitioners allege that none of the said transfers or gifts so made by said Ferdinand Schlesinger as aforesaid to his said wife and children within the six years prior to his death were as a matter of fact made in contemplation of death, and that the said special appraiser in his said report has expressly found that the same were not made in contemplation of death; and these petitioners contend that the provisions of Section 72.01 Clause (3), which provide that such gifts shall be construed to have been made in contemplation of death, and thereby subject them to the payment of inheritance taxes as transfers made in contemplation of the death of the donor, are invalid, unconstitutional and void, as being in conflict with and in violation of Article I, section one, and Article VIII section 1, of the Constitution of Wisconsin; and as being in conflict with and in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

That the time fixed by the Court for filing claims of creditors has elapsed and that claims have been filed against said estate amounting to $1,611,445.00 and that no objections have been filed to any of these. That a list of said claims is hereto attached, marked "Exhibit A," and made part of this petition.

That the expenses of administration are estimated as not less than $150,000.00

[fol. 104] That the specific legacies provided for in the will of decedent amount to $317,385.00, of which $250,000.00 are in gifts to charitable organizations which are exempt from inheritance taxes.

That after the payment of the foregoing legacies the residuum of the estate is given in trust for certain purposes which are set forth in the will, but that as a matter of fact the payment of debts and specific legacies and the expenses of administration will exhaust the entire estate.

That your petitioners have collected in cash from the assets of said estate sums amounting to $1,490,161.05 and have received by way of income sums amounting to $64,638.30.

That they have paid out on account of claims which have been filed sums amounting to $1,429,942.56 and on account of specific legacies sums amounting to $57,000.00; and on account of taxes and other expenses of administration sums amounting to $18,165.92.

That there still remains a balance of claims unpaid amounting to $181,502.41, and a balance of special legacies unpaid amounting to $260,385.00.

That certain shares of stock of the Steel & Tube Co. of America, and of The Newport Co., listed in the inventory, and together appraised as of the value of $725,901.98, have been sold by the executors, after the receipt of dividends thereon amounting to $60,711.00, for the price of $665,190.98, and that $232,812.66 of said purchase price has been paid in cash and the balance is to be paid in two annual instalments, due respectively May 1, 1923, and May 1, 1924.

[fol. 105] That there are collectible debts due the estate which have not yet been collected and cannot be collected for at least one

year from the present time and that until the collection of such debts these petitioners will not have funds sufficient to pay the debts of the estate, and that it is not possible at the present time to proceed to the final settlement of said estate.

That the inheritance taxes due from said estate as estimated by these petitioners have been paid, but have not yet been definitely fixed and determined by this court, and that it is important that the inheritance taxes upon the various legacies, gifts and transfers above mentioned should be so fixed and determined in order that any balances due thereon may be paid and the running of interest on such balances may cease.

Wherefore these petitioners pray for an order extending for a period of one year the time within which these petitioners shall pay the debts and legacies and make a final settlement of the estate and of their account as such executors, and fixing a time and place for the hearing of this petition; and also for an order fixing a time and place for the determination and adjudication of the inheritance taxes payable in said estate, without waiting for such final settlement of said estate.

Armin A. Schlesinger, Henry J. Schlesinger, Myron T. McLaren.

[fol. 106] STATE OF WISCONSIN,
County of Milwaukee, ss:

Henry J. Schlesinger, Armin A. Schlesinger and Myron T. MacLaren, the petitioners above named, being first duly sworn, depose and say that they have read the foregoing petition by them subscribed and know the contents thereof and that the same is true to their own knowledge.

Armin A. Schlesinger, Henry J. Schlesinger, Myron T. MacLaren.

Subscribed and sworn to before me this 7th day of December, 1922. Charles E. Monroe, Notary Public, Milwaukee Co., Wis.

[fol. 107] [File endorsement omitted.]

[fol. 108] IN COUNTY COURT OF MILWAUKEE COUNTY

[Title omitted]

ORDER APPOINTING SPECIAL APPRAISER—Filed December 29, 1923, Supreme Court

On reading and filing the verified petition of Henry J. Schlesinger, Armin A. Schlesinger, Myron T. MacLaren and Edward G. Wilmer, executors of the last will and testament of Ferdinand Schlesinger,

making application for the appointment forthwith of a special appraiser to fix the fair market value of the estate of said Ferdinand Schlesinger for the purposes of the inheritance tax, and the court having given careful consideration to the matter of said petition and it appearing to the satisfaction of the court that occasion exists for the appointment of such special appraiser, on the record and all the files and proceedings in the above entitled matter,

It is hereby ordered that said Jackson B. Kemper, a competent and suitable person be and he hereby is appointed as special appraiser to fix the fair market value of said estate under and in accordance with sections 1087-13 and 1087-14 and the cognate provisions of the statute of the State of Wisconsin for the purposes of the determination of the amount of the inheritance tax to which [fol. 109] said estate or any transfer or transfers of property made by the decedent may be subject.

By the Court,

Dated March 12/1921.

John C. Karel, County Judge. (Seal Milwaukee County Court, Wisconsin.)

[fol. 110] IN COUNTY COURT OF MILWAUKEE COUNTY

[Title omitted]

To the Honorable the Judges of the County Court of Milwaukee County:

REPORT, FINDINGS, AND APPRAISAL OF JACKSON B. KEMPER, SPECIAL APPRAISER—Filed County Court September 7, 1922; in Supreme Court December 29, 1923.

By an order of the court made and entered upon the 12th day of March, 1921, I was appointed Special Appraiser, pursuant to the Statutes, to fix the fair market value of the estate of said decedent for the purpose of the determination of the amount of inheritance tax to which said estate, or any transfer or transfers of property made by the decedent, might be subject. I thereupon gave notice to the Tax Commission of the State of Wisconsin, to the Public Administrator for the County of Milwaukee, to the executors and trustees under the will of said deceased, to sundry legatees under said will, to the attorneys for the executors and trustees, and to George E. Ballhorn, guardian ad litem for sundry minors interested in said estate, that I would hold a hearing on said matter at my office in the City of [fol. 111] Milwaukee on the 25th day of April, 1921. A copy of said notice is attached to this report.

On said 25th day of April, 1921, there appeared Messrs. Fawsett & Smart, on behalf of the executors, George E. Ballhorn, Esq.,

guardian ad litem, in person, John Harrington Esq., inheritance tax counsel, and E. E. Brassard, Esq., Assistant Attorney General, on behalf of the State of Wisconsin, the Tax Commission, and the Public Administrator, and, pursuant to my request, Messrs. Fred W. Rogers and W. E. McCarty, general appraisers of this court, were also present.

After a discussion with counsel, I determined that considering the apparent large monetary value of the estate, and the nature of the questions involved, the hearings before me should follow as far as possible the practice in a reference, and that such findings as I might make on any controverted questions should be based upon testimony offered before me by the various parties in interest. This method of procedure was agreeable to counsel and was thereafter followed, and from time to time hearings were had before me, witnesses sworn and examined, and I herewith return into court the testimony taken and the various written exhibits offered by the respective parties and received in evidence.

It was deemed best that no formal appearance be made or entered by the general appraisers, but at my request they, or one of them, attended practically all of the hearings, and a copy of all of the testimony taken was furnished to the general appraisers, and the general appraisers and the special appraiser have worked in harmony in an effort to fix the fair market value of the estate.

[fol. 112] As will fully appear from the testimony returned into court, there was controversy only over the value of two items in the inventory, to wit: stock in the Steel & Tube Company of America and in the Newport Company. Upon all other items contained in the inventory there was no controversy, and no testimony was offered, and it was agreed by all parties that the appraisal of such items should be made by me in conjunction with the general appraisers.

I have, therefore, made specific findings only upon such matters as were in controversy, and pursuant to such findings (which are attached to this report) have fixed the clear market value of the items in controversy, and as to the uncontroverted items have fixed the clear market value in accordance with the estimate made by the general appraisers, which in my opinion are correct and just.

[fol. 113] As I have already pointed out, Mr. Schlesinger gave to the various members of his family, in 1916, stock in the Newport Mining Company, which was subsequently exchanged for common stock in the Steel & Tube Company of America and the Newport Company respectively. I am of the opinion (and counsel agreed) that these gifts are to be treated as though they were gifts of stock in the Steel & Tube Company of America and the Newport Company respectively, and have appraised them as such.

Subsequently, and on or about the first of October, 1919, Mr. Schlesinger made additional gifts to his two sons and daughter of stock in the Steel & Tube Company of America and the Newport Company respectively, which gifts I have appraised at the value heretofore found for stock in these companies.

In 1916 Mr. Schlesinger also made gifts to his wife, his two sons and his daughter of stock in the Milwaukee Coke & Gas Company,

Harrow Spring Company and Detroit Iron & Steel Company, both preferred and common, which stock were subsequently, in the year 1919, sold by the respective donees to the Newport Company for cash, and I have therefore, appraised those gifts at the amount of cash actually received by the various donees from such sale.

[fol. 114] During the six years prior to his death Mr. Schlesinger made sundry advances in money to his wife and three children as follows:

To Mrs. Mathilde Schlesinger	$30,124.00
" H. J. Schlesinger	51,881.82
" Armin A. Schlesinger	10,217.73
" Mrs. Gertude MacLaren	36,000.00
" Mrs. Gertrude MacLaren	49,619.09

Which gifts, or advances, I have appraised at the respective amounts thereof.

Prior to December 31, 1914, and therefore more than six years prior to his death, Mr. Schlesinger made certain gifts or advances to his wife and his two sons, as follows:

To Mrs. Mathilde Schlesinger	$32,582.32
" H. J. Schlesinger	34,493.62
" Armin A. Schlesinger	250,274.99
" Armin A. Schlesinger	4,980.50

The amounts of these respective gifts or advances were carried on Mr. Schlesinger's books, but no interest was ever charged to the recipients and no payments made by the recipients on account for any of the advances so made.

The $250,274.99 given to Armin A. Schlesinger, and which represented the cost of a homestead built by Mr. Schlesinger for his son in the city of Milwaukee, was cancelled or written off upon the books under date of October 15, 1917. The other amounts given to Armin A. Schlesinger, both prior and subsequent to January 1, 1915, and the amounts given to H. J. Schlesinger, both prior and subsequent to January 1, 1915, above mentioned, were cancelled or written off on the books under date of December 15, 1919. The amounts given to Mrs. Schlesinger, both before and subsequent to January 1, 1915, above mentioned, were written off upon the books under date of December 31, 1920.

I am of the opinion that Mr. Schlesinger at all times intended the sums so given prior to the first day of January, 1915, to be gifts to his wife and sons, and even if that were not the fact they had ceased [fol. 115] to be assets of the estate prior to his death by virtue of the six-year statute of limitation.

I am of the opinion further that the evidence clearly establishes that these advances or gifts made more than six years prior to Mr. Schlesinger's death were not made "in contemplation of death," and I have, therefore, not made any appraisal gifts or advances, or any of them.

Considerable evidence was offered by the executors with the object of showing Mr. Schlesinger's condition of health and state of mind at the time of making the various gifts to the members of his family within six years prior to his death. This evidence was taken subject to objection on the part of counsel for the State of Wisconsin for the Tax Commission. Under the decision of the Supreme Court in State v. Ebeling, 169 Wis. 432, it is obvious that so far as the special appraiser is concerned it is entirely immaterial whether the gifts were made in contemplation of death or not.

Counsel for the executors stated frankly that it was their intention to carry this case to the Supreme Court and to seek to have that court reverse or modify the rule laid down in the Ebeling case, and they asked to have a finding made on the facts as to whether the gifts, or any of them, were made in contemplation of death, in order that, if they were successful in securing a change in the rule in the Ebeling case, the matter might be settled without having to come back for a further hearing on the facts.

Under the circumstances, I have concluded to make a finding on the question, on the theory that it can do no harm and if the executors are successful it may save the expense of additional litigation. [fol. 116] The uncontradicted evidence shows that Mr. Schlesinger, up to about fourteen months before his death, was a man of exceptional vigor and good health, giving great attention to and being very much absorbed in his business activities; that in October, 1919, he had an attack of what is commonly known as angina pectoris, but that his physicians and family did not advise him of the nature of his illness for fear that the knowledge would interfere with his state of mind and might prove a hindrance to his ultimate recovery. He himself was persuaded that his trouble was indigestion and that the attacks of pains from which he suffered from time to time were caused by such indigestion. He submitted very unwillingly to the restrictions which his physicians placed upon him and continued to give active attention to his business affairs. He was not advised until the month of November, 1920, that he was suffering from any heart trouble. He left for California on the 30th day of December, 1920, having made arrangements with an hotel in Pasadena for the purchase from it of a bungalow connected with the hotel property, in which he expected to spend the next several winters. He died on the train on his way to California on the 2nd day of January, 1921, of heart failure, caused, it is believed, in part by the high altitude. His age at the time of his death was slightly under seventy, the date of his birth being February 18th, 1851.

It will be observed that all of the gifts or advances to the members of his family were made prior to his first attack of angina pectoris, in October, 1919.

The words "in contemplation of death" as used in our statutes are thus defined:

"It is manifest that they were intended to cover transfers of parties who were prompted to make them by reason of the expectation of death, and which, in view of that event accomplish transfers of the [fol. 117] property of decedents in the nature of a testamentary dis-

position. It is therefore obvious that they are not used as referring to that expectation of death generally entertained by every person. The words are evidently intended to refer to an expectation of death which arises from such a bodily or mental condition as prompts persons to dispose of their property and bestow it on those whom they regard as entitled to their bounty." State v. Pabst, 139 Wis. 561.

I am of the opinion that none of the gifts of Mr. Schlesinger to members of his family, made within six years prior to his death, were made in contemplation of death as above defined, and have, therefore, made a finding to that effect.

Such a finding is, as above indicated, entirely immaterial and nugatory, unless counsel for the executors can persuade the Supreme Court to change the rule in State vs. Ebeling. The finding is made solely for the purpose of enabling the question to be presented with the minimum of litigation and expense, and upon the assurance of counsel that it is their intention to seriously present the question of the constitutionality of the statute again to the Supreme Court upon appeal in this case.

For the foregoing reasons, I have made findings as follows:

[fol. 118] Findings

First. I find that the clear market value of common stock in the Steel & Tube Company or America on the 2nd day of January, 1921, the date of Mr. Schlesinger's death, was the sum of $11.00 per share.

Second. I find that the clear market value of common stock in the Newport Company at the date of Mr. Schlesinger's death, January 2, 1921, was $1.6938 per share.

Third. I find that within six years prior to his death the decedent made transfers to his wife and children of stock in the Steel & Tube Company of America and in the Newport Company, or of stock which was subsequently, by the donees, exchanged for stock in those companies, as follows:

(a) To Mathilde Schlesinger, wife:

12 27 16.	1,956 sh. Newport Mining Co. Common.	Exchanged for	75,920.14 sh.
		Steel & Tube Co. of Am. and The Newport Co.	43,759.10 sh.

(b) To Armin A. Schlesinger, Son:

12 27 16.	1,511 sh. Newport Mining Co. Common.	Exchanged for	58,648.14 sh.
		Steel & Tube Co. of Am. and The Newport Co.	33,803.70 sh.
10 1 19.	73,465 sh. Steel & Tube Co. of Am. Common.		
10 1 19.	41,643.12 " The Newport Co. Common.		

(c) To H. J. Schlesinger, Son:

12 27 16.	1,511 sh. Newport Mining Co. Common.	Exchanged for	58,648.14 sh.
		Steel & Tube Co. of Am. and The Newport Co.	33,803.70 sh.
10 1 19.	73,465 sh. Steel & Tube Co. of Am. Common.		
10 1 19.	41,643.12 " The New Port Co. Common.		

[fol. 119] (d) To Gertrude MacLaren, Daughter:

12 27 16.	1,511 sh. Newport Mining Co. Common.	Exchanged for	58,648.00 sh.
		Steel & Tube Co. of Am. and The Newport Co.	33,803.72 sh.
10 1 19.	73,465 sh. Steel & Tube Co. of Am. Common.		
10/ 1/19.	41,643.12 " The Newport Co. Common.		

Fourth. I find that within six years of decedent's death he made transfers to his wife and children of stock in the Milwaukee Coke & Gas Company, Harrow Spring Company and Detroit Iron & Steel Company, as hereinafter specifically set out, which said stock was by the recipients sold and cash received therefor as shown below:

	(a) To Mathilde Schesinger, Wife:			
12 27 16.	1,218 sh. Milwaukee Coke & Gas Co. Common.	Sold for		$121,800.00
12 27 16.	4,701 sh. Harrow Spring Co. Common.	Sold for		30,047.00
12 27 16.	554 sh. Detroit Iron & Steel Co. Pref.	Sold for		5,540.00
12 27 16.	951 sh. Detroit Iron & Steel Co. Com.	Sold for		19,020.00
	(b) To Armin A. Schesinger, Son:			
12 27 16.	863 sh. Milwaukee Coke & Gas Co. Common.	Sold for		$86,300.00
12 27 16.	3,333 sh. Harrow Spring Co. Common.	Sold for		21,304.00
12 27 16.	392 sh. Detroit Iron & Steel Co. Pref.	Sold for		3,920.00
12 27 16.	674 sh. Detroit Iron & Steel Co. Com.	Sold for		13,480.00
	(c) To H. J. Schlesinger, Son:			
12 27 16.	863 sh. Milwaukee Coke & Gas Co. Common.	Sold for		$86,300.00
12 27 16.	3,333 sh. Harrow Spring Co. Common.	Sold for		21,304.00
12 27 16.	392 sh. Detroit Iron & Steel Co. Pref.	Sold for		3,920.00
12 27 16.	674 sh. Detroit Iron & Steel Co. Com.	Sold for		13,480.00
[fol. 120]	(d) To Gertrude MacLaren, Daughter:			
12 27 16.	863 sh. Milwaukee Coke & Gas Co. Common.	Sold for		$86,300.00
12 27 16.	3,333 sh. Harrow Spring Co. Common.	Sold for		21,303.26
12 27 16.	392 sh. Detroit Iron & Steel Co. Pref.	Sold for		3,920.00
12 27 16.	674 sh. Detroit Iron & Steel Co. Com.	Sold for		13,480.00

Fifth. I find that within six years prior to decedent's death he made transfers of cash to his wife and children as follows:

(a)	To Mathilde Schlesinger	$30,124.40
(b)	" Armin A. Schlesinger	10,217.73
(c)	" H. J. Schlesinger	51,882.82
(d)	" Gertrude MacLaren	36,000.00
	Gertrude MacLaren	49,619.09

Sixth. I find that more than six years prior to the decedent's death he made transfers in cash to his wife and two sons as follows:

(a)	To Mathilde Schlesinger	$32,582.32
(b)	" Armin A. Schlesinger	4,980.50
	Armin A. Schlesinger	250,274.90
(c)	" H. J. Schlesinger	34,493.62

I find that the transfers so made were not made in contemplation of death, and are not transfers which should be appraised for the purpose of inheritance tax.

Seventh. I find that the transfers made by the decedent to his wife and children within six years prior to his death, as set forth in findings third to fifth inclusive, were not made in contemplation of death, but are subject to the inheritance tax, and such transfers are to be appraised at the values hereinbefore found.

[fols. 121 & 122] Eighth. I find the clear market value of the other items contained in the inventory, and not in these findings hereinbefore specifically mentioned, to be the sums set opposite the respective items in the appraisal by me made and hereto attached.

Pursuant to the foregoing findings, I have appraised the clear market value of the estate of the decedent, and of any transfer or transfers of property made by the decedent, subject to the inheritance tax as shown by the itemized appraisal hereto affixed.

Dated, Milwaukee, August 8th, 1922.

Respectfully submitted, Jackson B. Kemper, Special Appraiser.

[fol. 123] Transfers Subject to the Inheritance Tax

To Mrs. Mathilde Schlesinger, decedent's wife, on the 27th of December, 1916, 1,956 shares of Newport Mining Company stock, subsequently exchanged by her for 75,290.14 shares of Steel & Tube Company of America, common, appraised at	$828,191.54
Also 43,759.10 shares The Newport Company, common, appraised at	74,119.16

On the same date the decedent made transfers to Mrs. Schlesinger of the following stocks, which were sold for the amounts set after them respectively, and are appraised at the amounts for which they were actually sold, to wit:

1218 shares	Milwaukee Coke & Gas Co., common...	121,800.00
4701 "	Harrow Spring Company, common....	30,047.00
554 "	Detroit Iron & Steel Co., Pfd.....	5,540.00
951 "	" " " " " Common.....	19,020.00
	Cash advanced to Mrs. Schlesinger within six years of decedent's death.....	30,124.40
	To Armin A. Schlesinger, a son of decedent, on the 27th day of December, 1916, 1,511 shares of Newport Mining Company stock, subsequently exchanged by him for 58,648.11 shares of Steel & Tube Company of America, common, appraised at..	645,129.54
	Also 33,803.70 shares The Newport Company, common, appraised at.....	57,256.71
	On October 1, 1919, 73,465 shares Steel & Tube Company of America, appraised at.....	808,115.00
[fol.124]	On October 1, 1919, 41,643.12 shares The New Port Company, appraised at.....	70,534.12
	On December 27, 1916, the decedent gave to his son Armin A. Schlesinger the following shares of stock subsequently sold by him at the amounts set after them respectively, and are appraised at the amounts for which they were actually sold, to wit:	
863 shares	Milwaukee Coke & Gas Co., Common...	86,300.00
2333 "	Harrow Spring Company Common....	21,304.00
392 "	Detroit Iron & Steel Co., Pfd.....	3,920.00
674 "	" " " " " Common.....	13,480.00
	Cash given by decedent to Armin A. Schlesinger within six years of decedent's death.....	10,217.73
	To Henry J. Schlesinger, a son of decedent, on the 27th day of December, 1916, 1,511 shares of Newport Mining Company stock, subsequently exchanged by him for 58,648.11 shares of Steel & Tube Company of America, common, appraised at..	645,129.54
	Also 33,803.70 shares The Newport Company, common, appraised at.....	57,256.71
	On October 1, 1919, 73,465 shares Steel & Tube Company of America, appraised at.....	808,115.00
	On October 1, 1919, 41,643.12 shares The Newport Company, appraised at.....	70,534.12
	On December 27, 1916, the decedent gave to his son Henry J. Schlesinger the following shares of stock subsequently sold by him at the amounts set after them respectively, and are appraised at the amounts for which they were actually sold, to wit:	
863 shares	Milwaukee Coke & Gas Co., Common..	86,300.00
2333 "	Harrow Spring Company, Common....	21,304.00
392 "	Detroit Iron & Steel Co., Pfd.....	3,920.00
674 "	" " " " " Common.....	13,480.00

Cash given by decedent to Henry J. Schlesinger within six years of decedent's death	51,882.82
To Gertrude MacLaren, a daughter of decendent, on the 27th day of December, 1916, 1,511 shares of Newport Mining Company stock, subsequently exchanged by her for 58,648.00 shares of Steel & Tube Company of America, common, appraised at	645,128.00
Also 33,803.72 shares the Newport Company, common, appraised at	57,256.74
On October 1, 1919, 73,465 shares Steel & Tube [fol. 125] Company of America, appraised at	808,115.00
On October 1, 1919, 41,643.12 shares The Newport Company, appraised at	70,534.12

On December 27, 1916, the decedent gave to his daughter, Gertrude MacLaren the following shares of stock subsequently sold by him at the amounts set after them respectively, and are appraised at the amounts for which they were actually sold, to wit:

863	shares	Milwaukee Coke & Gas Co., Common	86,300.00
3333	"	Harrow Spring Company, Common	21,304.00
392	"	Detroit Iron & Steel Co., Pfd.	3,920.00
674	"	" " " " " Common	13,480.00
Cash advanced by decedent to Gertrude MacLaren within six years of decedent's death			36,000.00
and			49,619.09

[fol. 126] [File endorsement omitted.]

[fol. 127] In County Court of Milwaukee County

[Title omitted]

Findings of Fact and Conclusions of Law—Filed County Court March 24, 1923; Supreme Court, December 29, 1923

The petition of Armin A. Schlesinger, Henry J. Schlesinger and Myron T. MacLaren, the sole acting executors of the Estate of Ferdinand Schlesinger, deceased, setting forth the amounts of the assets and liabilities, and expenses of administration and the condition of said estate, and the amounts of gifts made by the decedent to members of his family within six years prior to his decease, and alleging that none of said gifts were as a matter of fact made in contemplation of death and that the provisions of Section 72.01, Clause (3) of the Wisconsin Statutes, which provides that such gifts shall be construed to have been made in contemplation of death within the meaning of said section, are invalid, unconstitutional and void as being in conflict with and in violation of Article I, Section 1, and

Article VIII, Section 1 of the Constitution of Wisconsin, and as being in conflict with and in violation of Section 1 of the Fourteenth Amendment of the Constitution of the United States; and representing that there are collectible debts due the estate which have not yet been collected and cannot be collected for at least one year from the present time and that until the collection of such debts the petitioners will not have funds sufficient to pay the debts of the estate, and that it is not possible at the present time to proceed to the final settlement of said estate; that the inheritance taxes due from said estate as estimated by the petitioners have been paid, but have not yet been definitely fixed and determined by this court, and that it is important that the inheritance taxes upon the various legacies, gifts and transfers above mentioned should be so fixed and determined in order that any bal-
[fol. 128] ances due thereon may be paid and the running of interest on such balances may cease; and praying for an order extending for a period of one year the time within which the petitioners shall pay the debts and legacies and make a final settlement of the estate and of their accounts as such executors; and also for an order fixing a time and place for the determination and adjudication of the inheritance taxes payable in said estate, without waiting for such final settlement of said estate; having duly come on to be heard before this Court at a regular term of the Court held at the Court House in the City of Milwaukee, commencing on the first Tuesday of January, 1923, and on the 18th day of January in said term, pursuant to the order of this Court made in said matter on the 8th day of December, 1922;

Present and presiding the Honorable John C. Karel, County Judge, Messrs. Fawsett & Smart, appearing for the petitioners; George E. Ballhorn, appearing as guardian ad litem for Eileen Schlesinger, Armin Schlesinger, Robert Schlesinger, Gordon MacLaren, Mary MacLaren, and Douglas MacLaren, minors interested in said estate; John Harrington, Counsel for the Wisconsin Tax Commission, and Neele B. Neelen, Public Administrator of said County, appearing for the State of Wisconsin and County of Milwaukee;

And it satisfactorily appearing to the Court that due notice of the time and place of hearing of said petition has been given for three successive weeks by publication of a copy of said order of December 8th, 1922, pursuant to the Statutes and the terms of said order, and by mailing a copy of said order to the Tax Commission of said State and to the Public Administrator of said County twenty days before said hearing;

[fol. 129] And evidence having been offered and witnesses examined in open court, and counsel for petitioners having offered in evidence the evidence taken before the Special Appraiser and returned by him into court together with his Report and findings, and having in open court moved for an order confirming said Report and findings of the Special Appraiser, excepting the finding that the transfers made by the decedent to his wife and children within six years prior to his death as set forth in the Special Appraiser's findings numbered third, fourth and fifth, are subject to the inheritance tax; and having requested the Court to find specifically

upon the evidence that none of the gifts shown to have been made by the decedent to members of his family prior to his death were as a matter of fact made in contemplation of death; and having requested the Court to fix the just and reasonable compensation of the special and general appraisers; of the guardian ad litem; of Edward G. Wilmer, one of the executors named in the will but who having left the State has not for some time taken any active part in the administration of said estate; and of the attorneys for the estate;

And counsel having been heard and the matter submitted;

And the court having made an order extending for a period of one year from the 2nd day of March, 1923, the time within which the petitioners may pay the debts and legacies and make a final settlement of the estate and of their account as such executors, and having made and filed its decision on claims and having allowed as just and valid claims against said estate claims amounting to $1,615,386.66.

The court being now fully advised in the premises hereby confirms and approves in all respects the report, findings and appraisal of said special appraiser, and makes and files its finding of fact and conclusions of law as follows:

I. The findings and appraisal of the said special appraiser, as confirmed and supplemented by the findings and appraisal of the general appraisers, as to the amount and market value at the time [fol. 130] decedent's death, both of the property which he owned at the time of his death as shown by the inventory on file in said matter and of the property which he had transferred without adequate valuable consideration to his wife and children prior to his death as shown in the report, and findings of the said special appraiser, are hereby approved and adopted by the court as its findings, and are hereby made part hereof in all respects as though such findings and appraisal as made by said special and general appraisers were specifically incorporated herein.

II. That none of the gifts made by the decedent more than six years prior to his death were made in contemplation of death, or intended to take effect in possession or enjoyment at or after his death.

III. That none of the gifts made by the decedent within the six years next prior to his death were in fact made in view, or in anticipation, expectation, or apprehension of death, or in the actual contemplation of death as said term "contemplation of death" was used in the statute and had been defined and interpreted by the Supreme Court of Wisconsin prior to the enactment of Chapter 643 of the Laws of 1913; or intended to take effect in possession or enjoyment at or after the death of the decedent; but notwithstanding such facts all of the gifts made by the decedent within the six years next prior to his death must be construed to have been made in contemplation of death within the terms and provisions of Sec. 72.01 (3) of the Wisconsin Statutes.

IV. That the following sums are a just and reasonable compensation for services rendered by the following persons: $5,000.00 for the services of the Special Appraiser; $5,000.00 for the services of the

[fol. 131] General Appraisers; $3,125.00 for the services of Edward G. Wilmer, as one of the executors, under the terms of the will; $2,500.00 for the services of the Guardian ad litem; and $100,000.00 for the services of Fawsett & Smart, the attorneys for the executors of the estate.

And as conclusions of law the Court finds:

I. That none of the gifts referred to in the second of the foregoing findings of fact, made by the decedent to his wife and children more than six years before his death, were made in contemplation of death, or intended to take effect in possession or enjoyment at or after his death, or are subject to inheritance taxes under the Wisconsin Statutes.

II. That the gifts referred to in the third of the foregoing findings of fact, made by the decedent to his wife and children within the six years next prior to his death, are by the express terms of Section 72.01 Clause (3) of the Statutes subject to inheritance taxes, although not in fact made in contemplation of death, which Section of the Statutes, I hold in accordance with the decisions of the Supreme Court of Wisconsin, to be constitutional and valid.

III. That the claims on file against said estate, amounting to $1,615,386.66, which have been allowed by the Court as aforesaid; and the same amounting to $115,625.00 found to be a just and reasonable compensation for services rendered by the persons named in the fourth of the foregoing findings of facts, together with such other reasonable and necessary expenses as are shown to have been incurred by the executors in the administration of said estate; are proper deductions to be made in determining the clear value of the estate at the date of the death of the testator.

[fol. 132] IV. That the finding and determination of the inheritance taxes in said estate are to be made in accordance with the foregoing findings of fact and conclusions of law.

Dated this 24th day of March, 1923.

By the Court.

John C. Karel, County Judge. (Seal Milwaukee County Court, Wisconsin.)

[fol. 133] [File endorsement omitted.]

[fol. 134] IN COUNTY COURT OF MILWAUKEE COUNTY

[Title omitted]

SUPPLEMENTAL PETITION OF EXECUTORS—Filed County Court April 5, 1923; Supreme Court December 29, 1923

The petition of Armin A. Schlesinger, Henry J. Schlesinger and Myron T. MacLaren, the sole acting executors of the estate of Ferdinand Schlesinger, deceased, respectfully represents that the annexed is a partial account of their administration of said estate and asks that said account may be filed herewith; that they are not now ready to proceed to a final settlement of said estate and that the time within which the petitioners may pay the debts and legacies and make a final settlement of said estate and of their account as such executors, has been extended for a period of one year from the 2nd day of March, 1923, by an order of this Court, dated said 2nd day of March, 1923; that this account is filed for the purpose of aiding in the determination of the Inheritance Taxes payable in said estate, under findings of fact and conclusions of law, signed and filed upon the 21st day of March, 1923, in the above entitled matter; and these petitioners pray that a time and place be fixed for the examination and allowance of this account and for the determination and adjudication of the Inheritance Tax, if any, payable in said estate.

Dated, Milwaukee, Wisconsin, this 3d day of April, 1923.

Henry J. Schlesinger. Armin A. Schlesinger, per H. J. Schlesinger. Myron T. MacLaren. Fawsett & Smart, Attorneys for the Petitioners.

[fol. 135] Jurat showing the foregoing was duly sworn to by Henry J. Schlesinger, omitted in printing.

[fol. 136] [File endorsement omitted.]

[fol. 137] IN COUNTY COURT OF MILWAUKEE COUNTY

[Title omitted]

STIPULATION RE VALUATION AND DEDUCTIONS FOR INHERITANCE TAX—Filed County Court, September 11, 1923; Supreme Court, December 29, 1923

Died January 2, 1921.

I hereby consent that the valuation and deductions for inheritance tax purposes in the above entitled estate be as follows:

Value of said estate as per inventory	$2,062,911.65
Additional items added to inventory	961.23
Total	$2,063,872.88

Deductions	1,761,652.57
Clear value for taxable purposes	$299,220.31

Dated August 24th, 1923.

Neele B. Neelen, Public Administrator.

Approved: Wisconsin Tax Commission, by John Harrington, Inh. Tax Counsel.

Tax

Ignore bequest to Mona Schlesinger (daughter-in-law) in item 2 of will, bequest cancelled by codicil.

Mathilda Schlesinger (widow), value of bequest $10,385.00 plus life insurance $40,096.23, not included in inventory; plus $1,085,647.70 stocks of various corporations transferred to widow within six years before the testator's death; plus $30,124.40 gifts of money and of credit within six years before testator's death. Last two items not included in inventory.

Myron T. MacLaren (son-in-law) Item 2 of will, value of bequest $25,000.00

[fol. 138] Kathleen Schlesinger (daughter-in-law) item 2 of will, value of bequest $25,000.00

Item 3 of Will

Meta Eckoff (Stranger) as per will	1,000.00
Margaret Eckoff " " " "	1,000.00
Fred Robinson " " " "	1,000.00
Alfred Robinson " " " "	1,000.00
John Sley " " " "	1,000.00
Wilmot Saeger " " " "	1,000.00
Martha Groskopf " " " "	1,000.00

Item 4 of Will

Milwaukee Children's Hospital Association (charitable)	$50,000.00
Infants' Hospital of Milwaukee "	25,000.00
Associated Charities of Milwaukee "	50,000.00
Visiting Nurses Association of Milwaukee "	25,000.00
Columbia Hospital of Milwaukee "	20,000.00
Centralized Budget of Milwaukee "	80,000.00

Henry J. Schlesinger (son) stocks of various corporations transferred within six years before testator's death, appraised at $1,706,040.31; plus $51,882.82 gifts of money or credit within six years before testator's death and not included in inventory.

Armin A. Schlesinger (son) stocks of various corporation transferred within six years before testator's death, appraised at $1,706,040.31, not included in inventory; plus $10,217.73 gifts of money or credit within six years before testator's death, not included in inventory.

Gertrude MacLaren (daughter) stocks of various corporations transferred with six years before testator's death, appraised at $1,706,038.06 not included in inventory; plus $85,619.09 gifts of money or credit within six years before testator's death not included in inventory.

After the payment of the debts, expenses of administration and of the above mentioned specified legacies to Meta Eckoff et al., and the specific bequests to the various charitable organizations, pursuant to the terms and provisions of the last will and testament of the deceased, the estate will be exhausted and leave nothing for the residuary legatees mentioned in the will and all other provisions mentioned in the will for inheritance tax purposes may be ignored

118 48874

527 80/[174]*
512

[fol. 139] [File endorsement omitted.]

[fol. 140] THE STATE OF WISCONSIN:

COUNTY COURT OF MILWAUKEE COUNTY

FINAL ORDER DETERMINING INHERITANCE TAX—Filed County Court September 11, 1923; Supreme Court, December 29, 1923

[Title omitted]

Upon all the papers, documents, etc., heretofore served or filed in the above entitled matter, and upon all the proceedings heretofore had herein, and the following parties appearing: Henry J. Schlesinger, Armin A. Schlesinger, Myron T. MacLaren and Edward G. Wilmer, executors, in person and by Fawsett & Smart, their attorneys, George E. Ballhorn as guardian ad litem, John Harrington for Wisconsin Tax Commission, Neele B. Neelen, Public Administrator, in person, the Court finds and determines as follows:

That said deceased died on the 3rd day of January, 1921;

That the value of said Estate is $2,063,872.88;

That the deductions under the transfer tax law amount to $1,764,652.57;

That the clear value of said estate as of the date of the death of said testator is $299,220.31 plus gifts made within six years prior to testator's death $6,421,708.90;

That the legatees and devisees, relationship, legacies and devises, exemptions, amounts taxable, rates of taxation and amount of tax are as follows:

[*Figures enclosed in brackets erased in copy.]

Legatees and devisees	Relationship	Legacies and devisees	Amount exempt	Amount taxable	Per cent	Amount of tax
Myron T. MacLaren	Son in law	$23,569.19	$500.00	$23,069.19	2	$461.38
Kathleen Schlesinger	Daughter in law	23,569.19	500.00	23,069.19	2	461.38
Meta Eckoff	Stranger	942.77	100.00	842.77	5	42.14
Margaret Eckoff	Stranger	942.77	100.00	842.77	5	42.14
Fred Robinson	Stranger	942.77	100.00	842.77	5	42.14
Alfred Robinson	Stranger	942.77	100.00	842.77	5	42.14
John Sley	Stranger	942.77	100.00	842.77	5	42.14
Wilmot Saeger	Stranger	942.77	100.00	842.77	5	42.14
Martha Gross-kopf	Stranger	942.77	100.00	842.77	5	42.14
Milwaukee Children's Hospital	Charit. Corp.	47,138.38	All	None		None
Infant's Hospital of Milwaukee	" "	23,569.19	All	None		None
Associated Charities of Milwaukee	" "	47,138.38	All	None		None
Visiting Nurses	" "	23,569.19	All	None		None
Columbia Hospital	" "	18,855.35	All	None		None
Centralized Budget	" "	75,421.41	All	None		None
Mathilda Schlesinger	Widow	1,165,658.97	10,000.00	15,000.00	1	150.00
				25,000.00	2	500.00
				50,000.00	3	1,500.00
				400,000.00	4	16,000.00
				665,658.97	5	33,282.95
Henry J. Schlesinger	Son	1,757,923.13	2,000.00	23,000.00	1	230.00
				25,000.00	2	500.00
				50,000.00	3	1,500.00

Legatees and devisees	Relationship	Legacies and devisees	Amount exempt	Amount taxable	Per cent	Amount of tax
.....	.....	.....	.....	400,000.00	4	16,000.00
.....	.....	.....	.....	1,257,923.13	5	62,896.16
Armin A. Schlesinger	Son	1,716,258.04	2,000.00	23,000.00	1	230.00
.....	.....	.....	.....	25,000.00	2	500.00
.....	.....	.....	.....	50,000.00	3	1,500.00
.....	.....	.....	.....	400,000.00	4	16,000.00
.....	.....	.....	.....	1,216,258.04	5	60,812.90
Gertrude MacLaren	Daughter	1,791,659.40	2,000.00	23,000.00	1	250.00
.....	.....	.....	.....	25,000.00	2	500.00
.....	.....	.....	.....	50,000.00	3	1,500.00
.....	.....	.....	.....	400,000.00	4	16,000.00
.....	.....	.....	.....	1,291,659.40	5	64,582.97
						295,632.72

A payment of $295,739.58 was made on July 1st, 1922.

Dated this 11th day of September, 1923.

By the Court.

John C. Karel, County Judge.

[File endorsement omitted.]

[fol. 141] IN COUNTY COURT OF MILWAUKEE COUNTY

[Title omitted]

JUDGE'S CERTIFICATE—Filed Dec. 29, 1923

I, John C. Karel, Judge of the Second Division of the County Court of Milwaukee County, Wisconsin, and the Judge before whom the above entitled matter was tried, do hereby certify that the foregoing Petition for proof of will, Order for hearing, Order appointing guardian ad litem, Order admitting will to probate, Will, Codicil and Certificate of Probate thereof, Letters testamentary, Order appointing appraisers, Inventory and appraisal warrant of appraisers and statement of Ante Mortem gifts, Petition and Order, Report, Findings and Appraisal of Jackson B. Kemper, Special Appraiser, Receipt for Inheritance Tax, Tender, Petition of Executors, Notice of hearing, Proof of publication, Decision on claims, Order extending time to pay debts, settlement of estate, etc. Findings of Fact and Conclusions of Law, Petition and partial account, Notice, Proof of publication, Affidavit of mailing order In re inheritance tax, Findings in re inheritance tax, Statement in re Inheritance tax, Notice of appeal from order by the executors and order directing [fol. 142] service of copy of said notice on Inheritance Tax Counsel and the Public Administrator filed November 9th, 1923, Affidavit of service November 10th, 1923, on the Public Administrator filed November 19th, 1923, Admission of service November 10th, 1923 by Inheritance Tax Counsel filed November 19th, 1923, Notice of appeal by Mathilde Schlesinger, undertaking and order directing service of notice and undertaking on the Inheritance Tax Counsel and Public Administrator, filed November 9th, 1923, Affidavit of service November 10th, 1923, on Public Administrator filed November 19th, 1923, Admission of service November 10th, 1923, by Inheritance Tax Counsel, filed November 19th, 1923, Notice of appeal by Armin A. Schlesinger, undertaking on appeal and order directing service on the Inheritance Tax Counsel and the Public Administrator, filed November 9th, 1923, Affidavit of service November 10th, 1923, on Public Administrator, filed November 19th, 1923, Admission of service, November 10th, 1923, by Inheritance Tax Counsel, filed November 19th, 1923, Notice of appeal by Henry J. Schlesinger, undertaking on appeal and order directing service on the Inheritance Tax Counsel and Public Administrator, filed November 9th, 1923, Affidavit of service November 10th, 1923, on Public Administrator, filed November 19th, 1923, Admission of service November 10th, 1923, by Inheritance Tax Counsel, filed November 19th, 1923, Notice of appeal by Gertrude MacLaren, undertaking on appeal and order directing service on the Inheritance Tax Counsel and Public Administrator, filed November 9th, 1923, Affidavit of service November 10th, 1923, on Public Administrator, filed November 19th, 1923, and Admission of service by Inheritance Tax Counsel, filed November 19th, 1923, are the original papers

filed in this court in said matter and that they are transmitted [fol. 143] pursuant to the appeal of Armin A. Schlesinger, Henry J. Schlesinger and Myron T. MacLaren, executors, Mathilde Schlesinger, widow, Henry J. Schlesinger, Gertrude MacLaren and Armin Schlesinger to the Supreme Court of the State of Wisconsin from said judgment and the whole thereof.

Witness my hand and the seal of the County Court of Milwaukee County, Wisconsin, this 24th, day of December, 1923.

John C. Karel, County Judge. (Seal Milwaukee County Court, Wisconsin.)

[fol. 144] [File endorsement omitted.]

[fol. 145] In County Court of Milwaukee County

[Title omitted]

Stipulation re Bill of Exceptions—Filed in County Court January 3, 1924; January 10, 1924, Supreme Court

It is hereby mutually stipulated and agreed that but one bill of exceptions shall be settled and signed in the above entitled matter, and that one record shall be returned to the Supreme Court to be used upon all of said appeals.

It is further stipulated and agreed that the bill of exceptions, together with this stipulation, may be returned to the Supreme Court as a supplemental return upon said appeals.

Dated this 24th day of December, 1923.

Fawsett & Smart, Attorneys for All the Above-named Appellants. H. L. Ekern, Attorney General, and Franklin E. Bump, Assistant Attorney General, Appearing for State of Wisconsin. Neele B. Neelen, Public Administrator of the County of Milwaukee.

[fol. 146] [File endorsement omitted.]

[fol. 147] In County Court of Milwaukee County

[Title omitted]

Stipulation re Bill of Exceptions—Filed January 10, 1923

Armin A. Schlesinger, Henry J. Schlesinger and Myron T. MacLaren, executors of said estate; Mathilde Schlesinger, the widow, and Armin A. Schlesinger, Henry J. Schlesinger and Gertrude

MacLaren, children of said decedent, having appealed to the Supreme Court of Wisconsin from the order, finding and determination of the County Court of said County made and filed in the above entitled matter on the 11th day of September, 1923, fixing and determining the amount of inheritance taxes due and payable in said estate.

It is hereby mutually stipulated and agreed that the annexed bill of exceptions may be settled and signed by the Judge of said County Court by whom the matters involved in said order, finding and determination in said appeals were heard and tried, as the bill of exceptions in said matter for use upon said appeals without further notice by any party,

Dated this 20th day of December, 1923.

Fawsett & Smart, Attorneys for the Executors and the Above-
[fol. 148] named Appellants. Herman L. Ekin, Attorney General; Franklin E. Bump, Assistant Attorney General, Attorneys for the Wisconsin Tax Commission and for the State of Wisconsin. Neele B. Neelen, Public Administrator of the County of Milwaukee.

[File endorsement omitted.]

[fol. 149] IN COUNTY COURT OF MILWAUKEE COUNTY

[Title omitted]

BILL OF EXCEPTIONS—Filed in County Court January 3, 1924; Supreme Court January 10, 1924.

CAPTION

Be it remembered that the petition of Henry J. Schlesinger, Armin A. Schlesinger and Myron T. MacLaren, executors of the last will and testament of the above named Ferdinand Schlesinger, deceased, filed on the 8th day of December, 1922, praying for an order extending for a period of one year the time within which said petitioners should pay the debts and legacies and make a final settlement of the estate and of their account as such executors, and fixing a time and place for the hearing of said petition; and also for an order fixing the time and place for the determination and adjudication of the inheritance taxes payable in said estate without waiting for such final settlemen of said estate; duly came on for hearing before said court at a regular term of said court held at the courthouse in the city of Milwaukee, commencing on the first Tuesday of January, 1923, and on the 18th day of January in said term, pursuant to the order of the court made and filed in said matter on the 8th day of December, 1922;

[fol. 150] Present and presiding the Honorable John C. Karel,

County Judge; Fawsett & Smart appearing for the petitioners, and for Mathilde Schlesinger, widow of the decedent, and Armin A. Schlesinger, Henry J. Schlesinger and Gertrude MacLaren, children of the decedent; George E. Ballhorn appearing as guardian ad litem for Eileen Schlesinger, Armin Schlesinger, Robert Schlesinger, Gordon MacLaren, Mary MacLaren and Douglas MacLaren, minors interested in said estate; John Harrington, Inheritance Tax Counsel for the Wisconsin Tax Commission, appearing for the Tax Commission and the State of Wisconsin; and Neele B. Neelen, Public Administrator of said county, appearing for the county of Milwaukee;

And evidence having been offered and witnesses examined in open court by both parties, and counsel having been heard and the matter submitted, and the same having been taken under advisement by the court;

The petitioners, Armin A. Schlesinger, Henry J. Schlesinger and Myron T. MacLaren, as executors of the estate of said Ferdinand Schlesinger, deceased, presented to the court on the 2nd day of March, 1923 and filed, and requested the court to make and find the following several findings of facts and conclusions of law, to-wit:

[fol. 151] [Title omitted]

REQUESTED FINDINGS OF FACT AND CONCLUSIONS OF LAW

Now come Armin A. Schlesinger, Henry J. Schlesinger and Myron T. MacLaren, the sole acting executors of the estate of Ferdinand Schlesinger, deceased, and request the court to make and find the several findings of fact and conclusions of law hereto attached.

Fawsett and Smart, Attorneys for the Above-named Executors.

Dated March 1st, 1923.

[fol. 152] [Title omitted]

The petition of Armin A. Schlesinger, Henry J. Schlesinger and Myron T. MacLaren, the sole acting executors of the estate of Ferdinand Schlesinger, deceased, setting forth the amounts of the assets and liabilities, and expenses of administration and the condition of said estate, and the amounts of gifts made by the decedent to members of his family within six years prior to his decease, and alleging that none of said gifts were as a matter of fact made in contemplation of death and that the provisions of Section 72.01 Clause (3) of the Wisconsin Statutes, which provides that such gifts shall be construed to have been made in contemplation of death within the meaning of said section, are invalid, unconstitutional and void as being in conflict with and in violation of Article I, Section 1, and Article VIII, Section 1 of the Constitution of Wisconsin, and as being in conflict with and in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States; and representing that there are collectible debts due the estate which have

not yet been collected and cannot be collected for at least one year from the present time and that until the collection of such debts the petitioners will not have funds sufficient to pay the debts of the estate, and that it is not possible at the present time to proceed to the final settlement of said estate; that the inheritance taxes due from said estate as estimated by the petitioners have been paid, but have not yet been definitely fixed and determined by this court, and [fol. 153] that it is important that the inheritance taxes upon the various legacies, gifts and transfers above mentioned should be so fixed and determined in order that any balances due thereon may be paid and the running of interest on such balances may cease; and praying for an order extending for a period of one year the time within which the petitioners shall pay the debts and legacies and make a final settlement of the estate and of their account as such executors; and also for an order fixing a time and place for the determination and adjudication of the inheritance taxes payable in said estate, without waiting for such final settlement of said estate; having duly come on to be heard before this Court at a regular term of the Court held at the Court House in the City of Milwaukee, commencing on the first Tuesday of January 1923, and on the 18th day of January in said term, pursuant to the order of this Court made in said matter on the 8th day of December, 1922;

Present and presiding the Honorable John C. Karel, County Judge; Messrs. Fawcett & Smart, appearing for the petitioners; George E. Ballhorn appearing as guardian ad litem for Eileen Schlesinger, Armin Schlesinger, Robert Schlesinger, Gordon MacLaren, Mary MacLaren and Douglas MacLaren, minors interested in said estate; John Harrington, Counsel for the Wisconsin Tax Commission, and Neele B. Neelen, Public Administrator of said County, appearing for the State of Wisconsin and County of Milwaukee;

And it satisfactorily appearing to the Court that due notice of the time and place of hearing of said petition has been given for three successive weeks by publication of a copy of said order of December 8th, 1922, pursuant to the Statutes and the terms of [fol. 154] said order, and by mailing a copy of said order to the Tax Commission of said State and to the Public Administrator of said County twenty days before said hearing;

And evidence having been offered and witnesses examined in open court, and counsel for petitioners having offered in evidence the evidence taken before the Special Appraiser and returned by him into court together with his Report and findings, and having in open court moved for an order confirming said Report and findings of the Special Appraiser, excepting the finding that the transfers made by the decedent to his wife and children within six years prior to his death as set forth in the Special Appraiser's findings numbered third, fourth and fifth, are subject to the inheritance tax; and having requested the Court to find specifically upon the evidence that none of the gifts shown to have been made by the decedent to members of his family prior to his death were as a matter of fact made in contemplation of death; and having requested the Court to fix the just and reasonable compensation of the special and general

appraisers: of the guardian ad litem: of Edward G. Wilmer, one of the executors named in the will but who having left the State has not for some time taken any active part in the administration of said estate; and of the attorneys for the estate;

And counsel having been heard and the matter submitted;

And the court having made an order extending for a period of one year from the 2nd day of March, 1923, the time within which the petitioners may pay the debts and legacies and make a final settlement of the estate and of their account as such executors, and having made and filed its decision on claims and having allowed as just and valid claims against said estate claims amounting to $1,615,386.66. [fol. 155] The court being now fully advised in the premises hereby confirms and approves in all respects the report, findings and appraisal of said Special Appraiser, excepting the finding that the transfers made by the decedent to his wife and children within six years prior to his death, as set forth in the Special Appraiser's findings numbered third, fourth and fifth, are subject to the inheritance tax, and makes and files its findings of facts and conclusions of law as follows:

I. The findings and appraisal of the said Special Appraiser, as confirmed and supplemented by the findings and appraisal of the General Appraisers, as to the amount and market value at the time of decedent's death, both of the property which he owned at the time of his death as shown by the inventory on file in said matter and of the property which he had transferred without adequate valuable consideration to his wife and children prior to his death as shown in the report and findings of the Special Appraiser, are hereby approved and adopted by the court as its findings, and are hereby made part hereof in all respects as though such findings and appraisal as made by said Special and General Appraisers were specifically incorporated herein.

II. That none of the gifts made by the decedent more than six years prior to his death were made in contemplation of death, or intended to take effect in possession or enjoyment at or after his death.

III. That none of the gifts made by the decedent within the six years next prior to his death were made in view, or in anticipation, expectation, or apprehension of death, or in the actual contemplation of death, or in contemplation of death, as said term "contempla- [fol. 156] tion of death" was used in the Statute and had been defined and interpreted by the Supreme Court of Wisconsin prior to the enactment of Chapter 643 of the Laws of 1913, or intended to take effect in possession or enjoyment at or after the death of the decedent.

IV. That the following sums are a just and reasonable compensation for services rendered by the following persons: $5,000.00 for the services of the Special Appraiser; $5,000.00 for the services of the General Appraisers; $3,125.00 for the services of Edward G.

Wilmer, as one of the executors, under the terms of the will; $2,500.00 for the services of the Guardian ad litem; and $100,000.00 for the services of Fawsett and Smart, the attorneys for the executors of the estate.

And as conslusions of law the Court finds:

I. That none of the gifts referred to in the second of the foregoing findings of fact, made by the decedent to his wife and children more than six years before his death, were made in contemplation of death, or intended to take effect in possession or enjoyment at or after his death or are subject to inheritance taxes under the Wisconsin Statutes.

II. That the gifts referred to in the third of the foregoing findings of fact, made by the decedent to his wife and children within the six years next prior to his death, are not subject to the inheritance tax, and that the provisions of Section 72.01 Clause (3) of the Statutes prescribing that such gifts shall be construed to have been made in contemplation of death within the meaning of said section, although not in fact made in contemplation of death are invalid, unconstitutional and void as being in conflict with and in violation of Article I, Section 1, and Article VIII, Section 1, of the Constitution of Wisconsin and as being in conflict with and in violation of Section [fol. 157] 1 of the Fourteenth Amendment to the Constitution of the United States.

III. That the claims on file against said estate, amounting to $1,615,386.66, which have been allowed by the Court as aforesaid; and the sums amounting to $115,625.00 found to be a just and reasonable compensation for services rendered by the persons named in the fourth of the foregoing findings of facts; together with such other reasonable and necessary expenses as are shown to have been incurred by the executors in the administration of said estate; are proper deductions to be made in determining the clear value of the estate at the date of the death of the testator.

IV. That the finding and determination of the inheritance taxes in said estate are to be made in accordance with the foregoing findings of fact and conclusions of law.

By the Court.

—— ——, County Judge.

Dated this — day of ——, 1923.

[fol. 158] [File endorsement omitted.]

[fol. 159] That the court refused to adopt the second conclusion of law so requested by the executors to be made and found by the court, and refused to adopt any of the other of said requested findings of fact and conclusions of law except as the same are embodied in its findings of facts and conclusions of law made and filed in said matter on the 24th of March, 1923.

That thereafter the further and supplemental petition together with a partial account of their administration of said estate, filed by said executors on the 5th day of April, 1923, for the purpose of aiding in the determination of the inheritance taxes payable in said estate under the findings of fact and conclusions of law made and filed by the Court on the 24th day of March, 1923, as aforesaid, duly came on for hearing before the Court at a regular term of said Court begun and held on the first Tuesday of May, 1923, to-wit, on the 22nd day of May, 1923 in said term, pursuant to the order of the Court made and filed in said matter on the 5th day of April, 1923;

Present and presiding the Honorable John C. Karel, County Judge;

Fawsett & Smart appearing for the petitioners and for the widow and children of decedent; George E. Ballhorn as guardian ad litem appearing for the minors hereinabove named; John Harrington, Inheritance Tax Counsel, appearing for the Tax Commission and the State of Wisconsin; and Neele B. Neelen, Public Administrator, appearing for the County of Milwaukee;

[fol. 160] And evidence having been offered in reference to the last mentioned petition and the account filed therewith, and counsel having been heard and the matter having been submitted; and the court, being duly advised in the premises, having thereafter on the 11th day of September, 1923, made and filed its order, finding and determination fixing the inheritance taxes due in said estate in accordance with the requirements of its findings of facts and conclusions of law so filed by it on the 24th day of March, 1923, as aforesaid;

The said Armin A. Schlesinger, Henry J. Schlesinger and Myron T. MacLaren, as executors of said estate, by their attorneys, on the 21st day of September, 1923, filed the following written exceptions:

[fol. 161] [Title omitted]

EXCEPTIONS OF EXECUTORS

Now come Armin A. Schlesinger, Henry J. Schlesinger and Myron T. MacLaren, sole acting executors of the estate of the above named Ferdinand Schlesinger, Deceased, and except to the refusal of the court to make and find the second conclusion of law requested by said executors to be made and found in the above entitled matter, which refers to certain gifts made by the decedent to his wife and children within the six years next prior to his death.

Said executors also except to that part of the third of the findings of fact made and filed by the court in the above entitled matter which finds that notwithstanding the facts set forth in the preceding portion of said third finding of facts all of the gifts made by the decedent within the six years next prior to his death must be construed to have been made in contemplation of death within the terms and provisions of Section 72.01 Clause (3) of the Wisconsin Statutes.

They further except to that portion of the second of the conclu-

[fol. 162] sions of law made and filed by the court in the above entitled matter which reads as follows:

"That the gifts referred to in the third of the foregoing findings of fact, made by the decedent to his wife and children within the six years next prior to his death are by the express terms of Section 72.01 Clause (3) of the statutes subject to inheritance taxes, although not in fact made in contemplation of death."

They except also to that portion of said second conclusion of law which reads as follows:

"Which section of the statutes I hold to be constitutional and valid."

They further except to the fourth of said conclusions of law so far as the same directs that the finding and determination of the inheritance taxes in said estate are to be made in accordance with any of the provisions of said findings of fact and conclusions of law to which the foregoing exceptions are taken.

They also except to that portion of the order made and filed on the 11th day of September, 1923, which finds and determines that the gifts made by the decedent within six years prior to his death are subject to an inheritance tax and fixes the amount of such tax for the reason that the provisions of Section 72.01 Clause (3) of the Statutes [fol. 163] prescribing that such gifts shall be construed to have been made in contemplation of death within the meaning of said section, although not in fact made in contemplation of death are invalid, unconstitutional and void as being in conflict with and in violation of Article I, Section I, and Article VIII, Section I, of the Constitution of Wisconsin and as being in conflict with and in violation of Section I of the Fourteenth Amendment to the Constitution of the United States.

Dated September 21, 1923.

Fawsett & Smart, Attorneys for the Executors.

[fols. 164 & 165] [File endorsement omitted.]

[fol. 166] [Title omitted]

EXCEPTIONS OF MATHILDE SCHLESINGER

Now comes Mathilde Schlesinger, the widow of the above named decedent by Fawsett & Smart, her attorneys, and excepts to the refusal of the court to make and find the second conclusion of law requested by the executors of said estate to be made and found in the above entitled matter so far as the same refers to gifts made by the decedent to said Mathilde Schlesinger within the six years next prior to his death.

She also excepts to that part of the third of the findings of fact made and filed by the court in the above entitled matter which finds that notwithstanding the facts set forth in preceding portions of said third finding of fact, all of the gifts made by the decedent within the six years next prior to his death to the said Mathilde Schlesinger must be construed to have been made in contemplation of death within the terms and provisions of Section 72.01 Clause (3) of the Wisconsin Statutes.

[fol. 167] She also excepts to that portion of the second of the conclusions of law made and filed by the court in the above entitled matter, which reads as follows:

"That the gifts referred to in the third of the foregoing findings of fact made by the decedent to his wife and children within the six years next prior to his death are by the express terms of Section 72.01 Clause (3) of the Statutes subject to inheritance taxes although not in fact made in contemplation of death."

so far as said portion of said conclusion of law refers to gifts made by the decedent to the said Mathilde Schlesinger within the six years next prior to his death.

She also excepts to that portion of said second conclusion of law which reads as follows:

"Which section of the statutes I hold to be constitutional and valid."

She also excepts to the fourth of said conclusions of law so far as the same directs that the finding and determination of the inheritance taxes in said estate are to be made in accordance with any of the provisions of said findings of fact and conclusions of law to which the foregoing exceptions are taken.

She also excepts to that portion of the order made and filed on the 11th day of September, 1923, which finds and determines that the gifts made to her by the decedent within six years prior to his death are subject to an inheritance tax and fixes the amount of such tax for the reason that the provisions of Section 72.01 Clause (3) of the [fol. 168] Statutes prescribing that such gifts shall be construed to have been made in contemplation of death within the meaning of said section, although not in fact made in contemplation of death are invalid, unconstitutional and void as being in conflict with and in violation of Article I, Section 1, and Article VIII, Section 1, of the Constitution of Wisconsin and as being in conflict with and in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

Dated September 21, 1923.

Fawsett & Smart, Attorneys for Mathilde Schlesinger.

[fols. 169-184] [File endorsement omitted.]

[fol. 185] IN COUNTY COURT OF MILWAUKEE COUNTY

ORDER SETTLING BILL OF EXCEPTIONS

And because the foregoing requests for findings of facts and conclusions of law to be made and filed by the court in the above entitled matter, and the foregoing exceptions do not appear of record, I, the undersigned, the County Judge who heard and tried the matters above referred to, have upon the annexed stipulation of counsel settled and signed this bill of exceptions to the end that the same be made part of the record herein this 3rd day of January, 1924.

John C. Karel, County Judge.

[fol. 186] [File endorsement omitted.]

[fol. 187] IN COUNTY COURT OF MILWAUKEE COUNTY

[Title omitted]

JUDGE'S CERTIFICATE—Filed Jan. 10, 1924, Supreme Court

STATE OF WISCONSIN,
Milwaukee County, ss:

I, John C. Karel, Judge of the Second Division of the County Court of Milwaukee County, Wisconsin, and the Judge before whom the above entitled matter was tried, do hereby certify that the annexed and foregoing are the original stipulation and bill of exceptions filed and entered in the above entitled matter, and that the same are hereby transmitted to the Supreme Court of the State of Wisconsin, pursuant to notice of appeal herein, and supplemental to the return heretofore made.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court this 8th day of January, 1924.

John C. Karel, County Judge. (Seal Milwaukee County Court, Wisconsin.)

[fol. 188] [File endorsement omitted.]

[fol. 189] IN SUPREME COURT OF WISCONSIN

[Title omitted]

ARGUMENT AND SUBMISSION—March 14, 1924

And now at this day came the parties herein by their attorneys, and this cause having been argued by Charles F. Fawsett, Esq., for

the appellants, and by Franklin E. Bump, Esq., Assistant Attorney General, for the respondents, and submitted, and the court not being now sufficiently advised of and concerning its decision herein, took time to consider of its opinion.

[fols. 190 & 191] IN SUPREME COURT OF WISCONSIN

[Title omitted]

JUDGMENT—May 6, 1924

This cause came on to be heard on appeal from the order of the County Court of Milwaukee County and was argued by counsel. On consideration whereof, it is now here ordered and adjudged by this Court, that the order of the County Court of Milwaukee County, appealed from in this cause, be, and the same is hereby affirmed with costs against the said appellants.

Justice Eschweiler dissents.

[fol. 192] IN SUPREME COURT OF WISCONSIN

[Title omitted]

OPINION—Filed May 6, 1924

Appeals from order of the County court of Milwaukee county: John C. Karel, County Judge. Affirmed.

On the third day of January 1921, Ferdinand Schlesinger died testate, leaving a large estate. He also left surviving him a widow, two sons and a daughter, who among others, were legatees under the will of the deceased. It appears from the testimony that within six years of the date of his death the testator made gifts set out in the third finding of fact to his wife, two sons, and daughter, as follows:

Gifts to Mrs. Schlesinger	$1,115,772.10
Henry J. Schlesinger	1,757,923.13
Armin A. Schesinger	1,716,258.04
Gertrude MacLaren	1,791,657.15

As to these gifts the county court made the following finding of fact: "That none of the gifts made by the decedent within six years next prior to his death were in fact made in view, or in anticipation, expectation, or apprehension of death, or in the actual contemplation of death as said term 'contemplation of death' was used in the statute and had been defined and interpreted by the Supreme Court of Wisconsin prior to the enactment of Chapter 643 of the Laws of 1913;

or intended to take effect in possession or enjoyment at or after the death of the decedent; but notwithstanding such facts all of the gifts made by the decedent within the six years next prior to his death must be construed to have been made in contemplation of death [fol. 193] within the terms and provisions of Sec. 72.01 of the Wisconsin Statutes." His conclusion of law was as follows: "That the gifts referred to in the third of the foregoing findings of fact, made by the decedent to his wife and children within the six years next prior to his death, are by the express terms of Sec. 72.01, Clause (3) of the Statutes subject to inheritance taxes, although not in fact made in contemplation of death, which Section of the Statutes, I hold in accordance with the decisions of the Supreme Court of Wisconsin, to be constitutional and valid." From an order holding the gifts taxable under the provisions of Sec. 72.01 Subd. 3 of the statutes the executors and heirs appealed.

[fol. 194] VINJE, C. J.:

The appellants in their brief say "The only provision of the inheritance tax law to which exception is taken is that part of Section 72.01, clause (3) of the Wisconsin statutes, which was added by Chapter 643 of the Laws of 1913 reading as follows: "Every transfer by deed, grant, bargain, sale or gift, made within six years prior to the death of the grantor, vendor or donor, of a material part of his estate, or in the nature of a final disposition or distribution thereof, and without an adequate valuable consideration, shall be construed to have been made in contemplation of death within the meaning of this section."

The validity of this law is sustained in the case of Estate of Ebeling, 169 Wis. 432 which decision we are asked to overrule, because it is a recent one and not firmly grounded in the rule of stare decisis, and because objections to its constitutionality are now presented that were not before the court in the Ebeling case. It is true that a number of claims of unconstitutionality in the law are now made that were not urged in the Ebeling case, or if urged, took a different form and were not perhaps dealt with in detail in that opinion. The brief and argument in the present case cogently and clearly set forth the view of counsel and express as forcibly as can be the grounds urged. We take it both from the contents of the briefs and from statements made upon the oral argument that a tax upon gifts actually made in contemplation of death are conceded to be valid, and that objection is made only to that part of the law above set out that taxes all gifts within six years of the donor's death whether made in contemplation of death or not.

[fol. 195] The chief objection made to the validity of the law and the only ones we shall specifically deal with in this opinion may be summarized as follows:

1. The statute taxing gifts made within six years of donor's death is void because it lacks certainty. There is no certainty: (a) that the tax will ever be levied, or (b) if levied, what the amount of the

tax will be, or what the rate will be. It is claimed there must be certainty in tax levies.

2. The basis of classification is wrong. One class consists of gifts actually made in contemplation of death; another of gifts made within six years of death but not necessarily in contemplation thereof, so that the class consists of two different kinds of gifts, one made in contemplation of death and one within six years of the death of the donor. Members of the same class it is claimed must be substantially similar in kind.

3. If a gift made within six years of the donor's death is not made in contemplation of death the legislature cannot make it so. An existing fact cannot be substantially changed by a legislative fiat.

4. The tax cannot be justified as a tax upon gifts inter vivos alone. The classification is wrong.

In considering the various objections made to the law it should be borne in mind that the tax in question is not a property tax but a tax upon the right to receive property from a decedent. It is an excise law. Knowlton v. Moore, 178 U. S. 41. In the imposition of excise taxes greater latitude is permitted both in classification and in enforcement because of the difficulty of classifying and enforcing as compared with property or a direct tax.

[fol. 196] It is said that when the gift is made there is no certainty that a tax will ever be levied for if the donor survives for six years or more and the gift was not made in contemplation of death it is not taxable. That is true, but the same uncertainty may attach to a gift made ten years before death. It may be a matter for judicial determination whether the gift was made in contemplation of death. If it was it is taxable, if not it is not taxable. The donee of such a gift may have no reason to believe at the time it is received or at any time thereafter that it was made in contemplation of death and yet such may have been the fact. As to gifts made within six years their status at the time the tax is claimed is certain and fixed. That of gifts made previously is a subject of proof and perhaps of uncertainty till the court of last resort has passed upon whether or not they were made in contemplation of death. Personal property may be located in a certain taxing district of the state. It is not certain that a tax will have to be paid upon it the following year. It may be destroyed by fire or otherwise, or it may be moved out of the state before the tax is assessed. Life and law are full of uncertainties. There is no constitutional provision that at any given time all things must be certain. Contingencies are constantly dealt with in law. When the donor's estate is settled uncertainties as to the levy of the tax, the amount thereof and the rate are reduced to certainties, and that is all the law requires.

The second objection that the basis of classification is wrong because there are two classes, one of gifts made in contemplation of death and another of gifts made within six years though not in contemplation of death misinterprets the legislative intent. Such intent was to tax only gifts made in contemplation of death. That is the

[fol. 197] only class created. The legislature says that all gifts made within six years of the donor's death shall be construed to be made in contemplation of death, bringing such gifts within the only class created, namely, gifts made in contemplation of death. Waiving the question of whether the legislature could bring gifts made within six years within the class it is quite obvious that only one class is created and that a valid one, for gifts made in contemplation of death stand upon a different basis than ordinary gifts made inter vivos. It was the former the legislature sought to reach in order to insure a reasonably effective enforcement of the inheritance tax.

We come now to what we consider the most weighty objection to the law and that is the legislative declaration that all gifts made within six years of death shall be construed to be made in contemplation of death, and as interpreted by this court in the Ebeling case meaning that they shall conclusively be held to be gifts made in contemplation of death and shall fall within the one taxable class of gifts created by the legislature. In the Ebeling case it was clearly pointed out that such was the legislative intent and we shall not extend this phase of the discussion. It is said by appellants and there is legal authority for the statement that no legislative fiat can substantially alter an existing fact. Hence, if a gift is not made in contemplation of death the legislature cannot make it one. As was said by the Appellate Court of New York, In re Barbour's Estate, 173 N. Y. 276, and affirmed by the Court of Appeals in 226 N. Y. 639, "the legislature cannot make that so which is not so." This is of course true in a literal sense. The legislature cannot change the essential [fol. 198] nature of an existing fact, but it can, on grounds of public policy, give a certain legal import to a fact, and for purposes of classification and for a practical administration of laws it may include in one class cases that fall without it considered individually, but usually falling within it collectively considered. Our reports show that after the enactment of the inheritance tax law many cases appeared in which elderly men of wealth for the purpose of evading the law made a more or less complete distribution of their property by way of gifts. The difficulty of proving that such gifts were made in contemplation of death coupled with the public necessity of not allowing large estates to escape the provisions of the law induced the legislature to make the classification it did. While it may be granted that as to a particular gift not made in contemplation of death the legislature could not declare it to be one made in contemplation of death, it does not by any means follow that in establishing a general class it cannot draw into that class gifts strictly not falling within it, provided that gifts of that class are usually and ordinarily of the kind which the class calls for, and especially where a practical and efficient administration of the law demands the classification.

It is quite true we think to say that of the gifts coming under the statute made by residents of Wisconsin within six years of their death by far the larger proportion thereof have actually been made in contemplation of death. At any rate there is sufficient basis in fact for the truth of such statement to permit the legislature to act

upon it and make a classification accordingly. The legislature does not say that a gift not made in contemplation of death is actually made in contemplation of death. What it says is that if the gift is made within six years of the donor's death it shall for taxation pur- [fol. 199] poses be construed to fall within the class of gifts made in contemplation of death. The law is quite full of instances where, on grounds of public policy so as to effectively administer a law a certain definite and fixed legal import is given to facts, though the actual facts may be different. Thus dividends declared by a going corporation are conclusively declared to be made out of profits for income tax purposes though the actual facts may be quite the contrary. Van Dyke v. Milwaukee, 159 Wis. 460; State ex rel. Pfister v. Widule, 166 Wis. 48; Pfister Land Co. v. Milwaukee, 166 Wis. 223; State ex rel. Sallie F. Moon Co. v. Wis. Tax Comm. 166 Wis. 287. So insurance payable upon the death of a person shall be deemed a part of his estate for the purpose of the tax, though the deceased may not have paid a single premium upon the insurance. Upon the death of a joint tenant of property one half shall be deemed taxable to the estate though the interests may be different. Such provisions are made in order that the administration of tax laws may not be made too cumbersome, expensive and uncertain and to avoid escape from taxation. If A conveys his property to B to avoid his creditors, though upon the express promise that he will demand reconvey the statute steps in and says on grounds of public policy that the promise can not be enforced. The chapter on real property is full of instances where the legislature gives a conclusive construction to the title grant or relation of the parties when certain facts appear or certain language is used irrespective of what the particular parties meant.

Where the legislature acts in its own field in making classifications, or in construing the legal import of what constitutes a class, courts will not interfere unless it quite clearly appears that there is no just basis for the classification or for the legal import. In this case for [fol. 200] reasons already stated we think the class created by the legislature for taxation was a valid one, and that on grounds of public policy and in order to permit a practical and efficient administration of the inheritance tax laws it could import into the created class all gifts made within six years of the donor's death.

The Case of In re Barbour 173 N. Y. Supp. 276 among others is relied upon by appellants in support of the claim that the legislature did not intend and could not conclusively declare gifts made within six years to be made in contemplation of death. In the Barbour case the legislature declared that "every person shall be deemed to have died a resident and not a non-resident of the state of New York if and when such person shall have dwelt or shall have lodged in this state during and for the greater part of any period of twelve consecutive months in the twenty-four months next preceding his or her death." and the court held that such declaration created only a rebuttable presumption because the bill as first introduced read shall be deemed conclusively to have died a resident, and because to hold otherwise would result in double taxation for decedent was con-

fessedly a resident of New Jersey, and double taxation must rest upon clear intent. In our case the legislative intent we think is clear that the specified gifts were to be conclusively construed to be gifts in contemplation of death, and no question of double taxation inheres. On the contrary it is a case of lawful taxation or of no taxation.

It is also urged quite strongly that there is no good reason why a gift made six years and one day before death should escape taxation and one made one day short of six years should be taxed. That is true. Neither is there a good reason why a person twenty one years of age should be allowed to vote while another one day short of [fol. 201] twenty one cannot vote. The sufficient legal answer is that where there is classification by division of time, by number or by weight there must be an arbitrary line drawn somewhere and if the line drawn by the legislature cannot be said to be clearly wrong it must stand.

We agree with the applicants that the classification made will not support a tax as one on gifts inter vivos only. Under such taxation the classification is wholly arbitrary and void. We perceive no more reason why such gifts inter vivos should be taxed than gifts made within six years of marriage or any other event. It is because only one class of gifts closely connected with and a part of the inheritance tax law is created that the law becomes valid. Gifts made in contemplation of death stand in a class by themselves, and as such they are made a part of the inheritance tax law to the end that it may be effectively administered. We adhere to the ruling in the Ebeling case.

By the Court: Order affirmed.

[fol. 202] IN SUPREME COURT OF WISCONSIN

[Title omitted]

CLERK'S CERTIFICATE

I, Arthur A. McLeod, Clerk of the Supreme Court of the State of Wisconsin, do hereby certify that the above and foregoing is a true and correct transcript of all the record and proceedings now on file and of record in my office with all things concerning the same in the above entitled cause, except such papers as are omitted pursuant to the praecipe of the parties filed herein.

That the original writ of error, the petition therefor, order allowing the same, the citation with its service endorsed thereon, the assignment of errors, praecipe of plaintiff in error and a copy of the bond, are appended to the return herein, and that they are all returned to the Supreme Court of the United States in obedience to the command of the writ of error hereto annexed.

In witness whereof, I have hereunto set my hand and affixed the seal of said Court at Madison, this 14th day of July, A. D., 1924.

Arthur A. McLeod, Clerk of Supreme Court of Wisconsin.

(Seal of the Supreme Court of Wisconsin.)

[fol. 203] IN THE SUPREME COURT OF THE UNITED STATES

STATEMENT BY PLAINTIFFS IN ERROR OF POINTS TO BE RELIED UPON AND DESIGNATION OF PARTS OF RECORD TO BE PRINTED—Filed July 28, 1924

To the Clerk of the Supreme Court of the United States:

SIR: The points on which the plaintiffs in error intend to rely in said cause are the following:

1. That the Supreme Court of Wisconsin erred in affirming by its judgment the final order and judgment of the county court of Milwaukee County which adjudged that the gifts made by Ferdinand Schlesinger, deceased, to his wife and children within six years prior to his death, but which were not as a matter of fact made in [fol. 204] contemplation of his death were to be construed as having been made in contemplation of death and were subject to the taxes imposed upon transfers of property made in contemplation of death under the statutes of Wisconsin, and particularly of those portions of section 72.01 of said statutes which read as follows:

Section 72.01 A tax shall be and is hereby imposed upon any transfer of property, real, personal or mixed * * * to any person, association or corporation * * * in the following cases * * *

(3) When the transfer is of property made by a resident, or by a non-resident when such non-resident's property is within this state or within its jurisdiction, by deed, grant, bargain, sale or gift, made in contemplation of the death of the grantor, vendor, or donor, or intended to take effect in possession or enjoyment at or after such death. Every transfer by deed, grant, bargain, sale or gift made within six years prior to the death of the grantor, vendor or donor, of a material part of his estate, or in the nature of a final disposition or distribution thereof, without an adequate valuable consideration, shall be construed to have been made in contemplation of death within the meaning of this section;

and in adjudging, contrary to the contention of these plaintiffs in error, that said provisions of the statutes, as applied to the gifts so made to the decedent's wife and children as aforesaid, but not made in contemplation of the death of the donor, nor intended to take effect in possession or enjoyment at or after his death, are valid and not in conflict with or in violation of Section (1) of the Fourteenth Amendment to the Constitution of the United States and particularly

that portion of Section (1) of said Amendment which reads as follows:

[fol 205] Nor shall any state deprive any person of life, liberty or property without due process of law;

and that portion of Section (1) of said Fourteenth Amendment which reads as follows:

Nor (shall any state) deny to any person within its jurisdiction the equal protection of the laws.

2. That said Supreme Court of Wisconsin erred in refusing to adjudge, as requested by said plaintiffs in error that the gifts which were made by the decedent to his wife and children within six years next prior to his death and which were not, as a matter of fact, made in contemplation of the death of the donor, nor intended to take effect in possession or enjoyment at or after his death, were not subject to the inheritance tax imposed by the said Statutes of Wisconsin; and that the provisions of Section 72.01, Clause (3) of the Wisconsin Statutes, which prescribe that such gifts shall be subject to the tax thereby imposed upon transfers made in contemplation of death and shall be construed to have been made in contemplation of death within the meaning of said section, although not in fact made in contemplation of the death of the donor, nor intended to take effect in possession or enjoyment at or after his death, are invalid, unconstitutional and void, as being in conflict with and in violation of Section (1) of the Fourteenth Amendment to the Constitution of the United States and particularly of that portion of Section (1) of said Amendment which reads as follows:

[fol 206] Nor shall any state deprive any person of life, liberty or property without due process of law;

and that portion of Section (1) of said Amendment which reads as follows:

Nor (shall any state) deny to any person within its jurisdiction the equal protection of the laws;

3. That the said judgment of the Supreme Court of Wisconsin, affirming the said judgment of the county court of Milwaukee County is repugnant to and in conflict with the provisions of Section (1) of the Fourteenth Amendment to the Constitution of the United States, and particularly those portions of Section (1) of said Amendment which read as follows:

Nor sall any state deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The only portions of the record deemed necessary for the consideration of the foregoing points are the following:

Writ of error, pages 1-3.
Assignment of errors, pp. 10-15.
Citation, pp. 21-23.
Pleas Supreme Court of Wisconsin, p. 28.
Notice of appeal by executors from order of county court and assignment of errors upon said appeal, pp. 32-37.
[fol. 207] Notice of appeal by Mathilde Schlesinger and assignment of errors on said appeal, pp. 44-49.
(The notices of appeal and assignments of error by Armin A. Schlesinger, Henry J. Schlesinger and Gertrude MacLaren are in substantially the same form as the notice of appeal and assignment of errors by Mathilde Schlesinger and for that reason need not be printed.)
Petition of executors, pp. 101-107.
Order appointing special appraiser, pp. 108, 109.
Special appraiser's report, pp. 110-118.
Special appraiser's findings, pp. 118-122.
Special appraiser's appraisal, pp. 122-126.
Findings of County Court, pp. 127-133.
Supplemental petition by executors, pp. 134-136.
Stipulation of public administrator and inheritance tax counsel, pp. 137-139.
Final order determining inheritance tax, p. 140.
Certificate and return of county judge, pp. 141-144.
Stipulation as to bill of exceptions and record, pp. 145, 146.
Stipulation as to bill of exceptions, pp. 147, 148.
Bill of exceptions, pp. 149, 150.
Requested findings of fact, pp. 151-160.
Exceptions by executors, pp. 161-164.
Exceptions by Mathilde Schlesinger, pp. 165-169.
[fols. 208 & 209] (Exceptions by Armin A. Schlesinger, Henry J. Schlesinger and Gertrude MacLaren are in substantially the same form as those by Mathilde Schlesinger and for that reason need not be printed.)
Judge's certificate to bill of exceptions, pp. 185, 186.
Judge's supplemental return, pp. 187, 188.
Argument in Supreme Court of Wisconsin, p. 189.
Judgment of Supreme Court of Wisconsin, p. 190.
Opinion of Supreme Court of Wisconsin, pp. 191-201.
Certificate of Clerk of Supreme Court of Wisconsin, p. 202.
No other portions of the record except those indicated above are required to be printed.

Dated this 18th day of July, 1924.

Yours Respectfully, Charles F. Fawsett, Edward U. Smart, Charles E. Monroe, Counsel for the Plaintiffs in Error.

Service of a copy of the foregoing statement is hereby admitted this 19th day of July, 1924, and it is hereby stipulated and agreed that no other portions of the record than those above indicated by

counsel for the plaintiffs in error are necessary to the consideration of the points involved in this case and that no other than said portions of the record are necessary to be printed.

Herman L. Ekern, Attorney General; Franklin E. Bump, Assistant Attorney General, Counsel for the Defendants in Error.

[fol. 210] [File endorsement omitted.]

Endorsed on cover: File No. 30,521. Wisconsin Supreme Court. Term No. 556. Armin A. Schlesinger, Henry J. Schlesinger, and Myron T. MacLaren, executors, etc., et al., plaintiffs in error, vs. The State of Wisconsin and County of Milwaukee. Filed July 28, 1924. File No. 30,521.